

A

PRACTICAL TREATISE

ON

THE CRIMINAL LAW,

WITH

COMPREHENSIVE NOTES

ON EACH PARTICULAR OFFENCE, THE PROCESS,
INDICTMENT, PLEA, DEFENCE, EVIDENCE,
TRIAL, VERDICT, JUDGMENT, AND
PUNISHMENT.

IN FOUR VOLUMES.

VOL. II.

CONTAINING

PRECEDENTS OF INDICTMENTS, &c.

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THE SECOND AND THIRD VOLUMES.

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CHAPTER I.

THE USUAL COMMENCEMENTS AND CONCLUSIONS OF INDICTMENTS, INFORMATIONS, CORONER'S INQUESTS, AND PRESENTMENTS OF A JUDGE OR JUSTICE.

MIDDLESEX. The jurors for our lord the king upon their oath present, that Elizabeth Powell, late of the parish of Saint Paul, Covent Garden, in the county of Middlesex (*a*), widow, on the twentieth day of February, in the sixth year of the reign of our sovereign lord George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the Faith, with force and arms, at the said parish of Saint Paul, Covent Garden, in the said county of Middlesex, did, &c. [*State offence.*]

Commencement of indictment at sessions for the county of Middlesex, for an offence committed out of the city and liberty of Westminster.

Middlesex. The jurors for our lord the king upon their oath present, that A. B. late of the parish of Saint Martin in the Fields, in the county of Middlesex, yeoman, &c. [*Proceed as above.*]

Commencement of indictment at sessions for county of Middlesex, for an offence committed within

the city and liberty of Westminster (*b*).

City, borough, and town of Westminster. The jurors for our lord the king upon their oath present, that A. B. late of the parish of Saint Martin in the Fields, in the county of Middlesex, yeoman, &c. [*Proceed as above.*]

Commencement of indictment at sessions for the city and liberty

(*a*) It is generally preferable to state the defendant's addition of place in the parish or place where the offence was committed, ante, vol. i. 210.

(*b*) This is the proper form of commencement of indictment at the sessions for Middlesex, for an offence committed within the city and liberty of Westminster, except the precinct of Saint Martin's le Grand, London. See Cro.C.C. 7th edit. 36, 7. 8th edit. 14. and next precedent.

of Westminster, for an offence committed within same but without St. Martin's le Grand (*a*).

their oath present, that A. B. late of the parish of Saint Martin in the Fields, within the liberty of the dean and chapter of the collegiate church of Saint Peter, Westminster, the city, borough, and town of Westminster, in the county of Middlesex, yeoman, &c. on, &c. with force and arms at the parish aforesaid, and within the liberty aforesaid, in the city, borough, and town of Westminster aforesaid, in the county of Middlesex aforesaid, did, &c. [*State offence.*]

Commencement of indictment at sessions for the city and liberty of Westminster for an offence committed within same, and also within St. Martin's le Grand (*b*).

City, borough, and town of Westminster, in the county of Middlesex, and } The jurors for our lord the king upon Saint Martin's le Grand, London. } their oath present, that A. B. late of the parish of Saint James, within the liberty of the dean and chapter of the collegiate church of Saint Peter, Westminster, the city, borough, and town of Westminster, in the county of Middlesex, and Saint Martin's le Grand, London, yeoman, on, &c. with force and arms at the parish aforesaid, within the liberty aforesaid, in the county aforesaid, did, &c. [*State offence.*]

Commencement of an indictment at the assizes, or general quarter sessions (*c*).

Essex. The jurors for our lord, the king upon their oath present, that C. D. late of the parish of —, in the county of Essex (*d*), labourer, on the first day of January, in the fifth year of the reign of our sovereign lord George the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the Faith (*e*), with force and arms at the parish of — aforesaid, in the county of Essex aforesaid, &c. * [*State offence.*]

The like with an alias dictus of surname (*f*).

Essex. The jurors for our lord the king upon their oath present, that John Richardson, late of the parish of —, in the county of Essex, labourer, otherwise called John Baldwin, on, &c.

The like with an alias addition of degree (*g*).

Essex. The jurors for our lord the king upon their oath present, that C. D. late of the parish of —, in the

(*a*) As to this form, see Cro. C. C. 7th edit. 37.

(*b*) As to this form, see Cro. C. C. 7th edit. 37.

(*c*) Cro. C. C. 8th edit. 45.

(*d*) It is usual and better to state defendant's addition of

county where he resides, see reason, ante, vol. i. 210.

(*e*) This is the present style.

(*f*) The addition should always be before the alias dictus, ante, vol. i. 210.

(*g*) Fost. 5.

county of Essex, gentleman, otherwise called C. D. late of the same place, esquire, on, &c.

Essex. The jurors for our lord the king upon their oath present, that E. D. wife of C. D. late of the parish of —, in the county of Essex, yeoman, on, &c.

The like against a feme covert indicted separately (a).

Essex. The jurors for our lord the king upon their oath present, that C. D. late of the parish of —, in the county of Essex, labourer, E. F. late of the same place, labourer, and G. H. late of the same place, sergemaker, on, &c.

The like against several defendants (b).

Admiralty of England. The jurors for our sovereign lord the king upon their oath present, that C. D. late of —, mariner, on, &c. with force and arms upon the high sea, near the coast of Malabar, in the East Indies, and within the jurisdiction of the Admiralty of England, in and on board of a certain ship, called the Adventure galley (whereof the said C. D. was then and there commander), then and there being, feloniously, wilfully, and of his malice aforethought, did, &c. [*State the offence and every fact to have happened within the jurisdiction of the Admiralty of England aforesaid; and if for murder, conclude as follows:*]—And so the jurors aforesaid, upon their oath aforesaid, do say, that the aforesaid C. D. him the said A. B. upon the high sea aforesaid, in the ship aforesaid, and within the jurisdiction of the Admiralty of England aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder against the peace of our said lord the king, his crown and dignity.

Indictment for an offence within the Admiralty jurisdiction (c).

And the jurors aforesaid, upon their oath (e) aforesaid, do further present, that the said C. D. on, &c. with force and arms, at, &c. aforesaid, &c. [*State the offence.*]

Commencement of a second or subsequent count (d).

(a) Ante, vol. i. 210. 2 Hale, 183. Bac. Abr. Indictment, 170, 7. Cro. C. C. 8th ed. 35. G. 2; but see Post. 5.
Bac. Abr. Misnomer, B. 4. (c) Cro. C. C. 8th ed. 443.
Cro. Eliz. 198. 750. 2 Inst. 447. 7th ed. 700, 707. Stark.
669. Hawk. b. 2. c. 23. s. 124. 367. 1 Leach Cro. L. 4th ed.

(b) In Hawk. b. 2. c. 25. s. 73, 388. 569. 3d ed. 432. 648.
it is said to be safer to repeat (d) Cro. C. C. 8th ed. 45.
the addition of place after the (e) When a second offence is
name of each defendant, 1 Buls. alleged in the same indictment

Common conclusion of an indictment or second count at common law (a).

In contempt of our said lord the king and his laws, to the evil example of all others (b), and against the peace of our said lord the king, his crown and dignity (c).

The like where the offence has been particularly injurious to an individual (d).

To the great scandal, infamy, disgrace, and damage of the said A. B. to the evil and pernicious example of all others, in contempt of our said lord the king, and his laws, and against the peace of our said lord the king, his crown and dignity.

Conclusion of indictment or count for treason (e).

In contempt of our said lord the king and his laws, to the evil example of all others, contrary to the duty of the allegiance of him the said C. D. against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Common conclusion of indictment or second count on a statute (f).

Against the form of the statute (or "statutes") in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Indictment against a principal in first degree, and a principal in second degree (g).

Essex. The jurors for our lord the king upon their oath present, that C. D. late of, &c. and E. F. late of, &c. on, &c. with force and arms, at, &c. in and upon one A. B.

it should be prefaced with a *super sacramentum suum ulterius presentant per Holt*, in Granburn's case, 4 St. Tri. 686. 6 St. Tri. App. 56. 2 Salk. 632. Holt, 687.

(a) See ante, vol. i. 245, 6. Cro. C. C. 8th ed. 45. The conclusions vary according to the nature of the offence.

(b) In the old forms the following words were here inserted "in the like case offending," but it is better to omit them.

(c) If offence in time of two kings charge it accordingly, thus, "to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said late lord the king, and of our present king lord George the

Fourth, and against the peace of our said late lord the king, his crown, and dignity, and against the peace of our said lord the now king, his crown, and dignity." Ante, vol. i. 247.

(d) In case of libel or other offence more particularly affecting an individual, the form may be as above, ante, vol. i. 245. Cro. C. C. 8th ed. 256, 257.

(e) 6 Wentw. 357.

(f) Ante, vol. i. 290; 1, 2. Cro. C. C. 8th ed. 45.

(g) See the forms and law, 1 Leach, 360. 388. 515. 2 East, P. C. 516. 1 Hale, 521, 2. Andr. 195. Fost. 130. And as to indictments against principals in first and second degree, see ante, vol. i. 259, 260, 268, 9.

in the peace of God, and of our said lord the king, then and there being, feloniously, and wilfully, and of their malice aforethought, did make an assault, and that the said C. D. a certain gun called a carbine, of the value of £10, then and there charged with gunpowder, and a leaden bullet, which said gun, he the said C. D. in both his hands, then and there had and held at and against the said A. B. then and there feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said C. D. with the leaden bullet aforesaid, by means of shooting off and discharging the said gun so loaded, to, at, and against the said A. B. as aforesaid, did then, and there, feloniously, wilfully, and of his malice aforethought, strike, penetrate, and wound the said A. B. in and upon the right side of the head of him the said A. B. near his right temple, giving to him the said A. B. then and there, with the leaden bullet aforesaid, by means of shooting off and discharging the said gun so loaded, to, at, and against the said A. B. and by such striking, penetrating, and wounding the said A. B. as aforesaid, one mortal wound, in and through the head of him the said A. B. of which said mortal wound the said A. B. did then, and there, instantly die; and that the said E. F. then and there, feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, abetting, comforting, assisting, and maintaining the said C. D. in the felony and murder aforesaid, in manner and form aforesaid to do and commit. And the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. and E. F. him, the said A. B. in manner and form aforesaid, feloniously, wilfully, and of their malice aforesaid, did kill and murder, against the peace of our lord the king, his crown and dignity:

[5]

Offence of the principal in second degree.

[*After framing the indictment against the principal in the usual form, at the foot, proceed as follows:*]—And the jurors aforesaid, upon their oath aforesaid, do further present, that I. K. late of, &c. labourer, before the said felony, (or “felony and murder,” or “burglary,” &c. as the case is) was committed in form aforesaid, to wit, on, &c. with force and arms,

Common indictment against an accessory before the fact to murder, burglary, or felony (a).

(a) See forms, 1 Leach, 401. 515. 1098, 1099. Cro. C. C. 8th edit. 48. 7th edit. 132. 2 Stark. 456. See vol. i. 262. 272, as to the law and neces-

sary allegations. The accessory cannot be convicted on this indictment, if it appear that he was present aiding and abetting, 1 Leach, 515.

at, &c. did unlawfully and feloniously counsel, aid, abet, and procure, (or if for murder, “did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command”) the said C. D. to do and commit the said felony, (or “the said felony and murder”) in manner and form aforesaid, against the peace of our said lord the king, his crown, and dignity.—[*And if against a statute, add “and against the form of the statute, in such case made and provided.”*]

Indictment
against an access-
sary for harbour-
ing the principal
felon (a).

[6]

[*After framing the indictment against the principal, in the usual form, at the foot, proceed as follows:*—And the jurors aforesaid, upon their oath aforesaid, do further present, that I. K. late of, &c. labourer, well knowing the said C. D. to have done and committed the said felony and burglary [*according to the fact,*]¹ in form aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. him the said C. D. did feloniously receive, harbour, and maintain, against the peace of our said lord the king, his crown, and dignity.

INFORMATIONS, EX OFFICIO, BY ATTORNEY-GENERAL.

Michaelmas Term, in the 6th year of the reign
of king George the Fourth.

Information by
the attorney-
general *ex officio*
(b).

Middlesex, (to wit.) Be it remembered, that A. B. esquire, attorney-general of our sovereign lord the now king, who for our said lord the king prosecuteth in this behalf, in his proper person, comes here into the court of our said lord the king, before the king himself, at Westminster, in the county of Middlesex, on — next after —, in this same term, and for our said lord the king gives the court here to understand and be informed, that C. D. late of —, yeoman, on, &c. [*describe the offence precisely as in an indictment, and conclude each count the same as an indictment, ante, 3 to 5, and if*

(a) See form, Cro. C. C. 8th edit. 48. 2 Stark. 456. As to the law and necessary averments, ante, vol. i. 264. 272, 3.

(b) See form, 2 Ld. Raym. 1461. Stark. 357. Lil. Ent. 301. Difference between infor-

mation by attorney-general *ex officio*, and one in the crown office, in the name of the master, 9 East, 527, 8. Ante, vol. i. If by solicitor-general during vacancy, see 4 Burr. 2553, 4. 2576, 7.

there be several counts, commence each as follows, and conclude the information as below.]

And the said attorney-general of our said lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, that the said C. D. on, &c. *[state the offence as in a second count in an indictment, and conclude the whole as follows.]*

Second count of the same (a).

Whereupon the said attorney-general of our said lord the king, who for our said lord the king in this behalf prosecutes, for our said lord the king, prays the consideration of the court here in the premises, and that due process of law may be awarded against the said C. D. in this behalf, to make him answer to our said lord the king, touching and concerning the premises aforesaid, &c.

Conclusion of information.

INFORMATION IN NAME OF MASTER OF
CROWN OFFICE.

[7]

Trinity Term, 6 Geo. 4.

Denbighshire, (to wit.) Be it remembered, that ———, esquire, coroner, and attorney of our lord the now king, in the court of our said lord the now king, before the king himself, who prosecutes for our said lord the king in this behalf, in his proper person, comes here into the court of our said lord the king, before the king himself at Westminster, on Tuesday next, after the Octave of the Purification of the Blessed Virgin Mary, in the 6th year of the reign of our sovereign lord the now king, and for our said lord the king, give the court here to understand and be informed that C. D. late of, &c. *[here state the offence with the same precision as in an indictment, and conclude each count according to the nature of the offence, as follows.]*

Commencement of information in Crown office, in name of the master.

To the great damage of him the said A. B., to the evil example of others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Conclusion of each count.

And the said coroner and attorney of our said lord the king, who for our said lord the king in this behalf prosecutes, further

Commencement of second count.

(a) See form of second count, 2 Ld. Raym. 1462.

giveth the court here to understand and be informed that the said C. D. on, &c. [*state offence as in second count of an indictment.*]

Common conclusion.

Whereupon the said coroner and attorney of our said lord the king, who for our said lord the king in this behalf prosecuteth for our said lord the king, prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him, the said C. D. in this behalf, to make him answer to our said lord the king, touching and concerning the premises aforesaid.

FORM OF CORONER'S INQUEST.

Inquisition of murder against principal, and aiders and abettors (a).

[8

Middlesex. An inquisition indented, taken for our sovereign lord the king, at the parish of —, in the county of —, the — day of —, in the — year of the reign of —, before A. B. gentleman, one of the coroners (b) of our said lord the king, for the county aforesaid, upon the view of the body of C. D. then and there lying dead, upon the oaths (c) of E. F. G. H. I. K. &c. [*stating all the names*] good and lawful men of the county aforesaid, duly chosen, and who being then and there duly sworn, and charged to inquire for our said lord the king, when, where, how, and after what manner, the said C. D. came to his death, do say upon their oath that one L. M. late of — aforesaid, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the, &c. with force and arms, at, &c. in and upon the aforesaid C. D. in the peace of Gæd, and of the said lord the king, then and there being feloniously, wilfully, and of his malice forethought, did make an assault, and that the aforesaid L. M. then and there, with a certain drawn sword, made of iron and steel, of the value of 5s. which he the said L. M. then and there had, and held in his right hand; the aforesaid C. D. in and upon the left part of the belly of the said C. D. a little above the navel of the said C. D. then and there violently, feloniously, wilfully, and of his malice fore-

(a) As to prosecutions founded on a coroner's inquest, ante, vol. i. 163. See forms, Burn, J. Coroner, VI. Cro. C. C. 8th ed. 238. Williams, Just. Coroner, IV. Imp. Off. Cor. 1st ed. 68, &c. 2d ed. 467. 2 Star. 356.

(b) This seems necessary, Hawk. b. 2. c. 25. s. 119.

(c) Hawk. b. 2. c. 25. s. 126. 1 Sid. 140. 1 Keb. 498.

thought, thrust, stab, and penetrate, and that the said C. D. with the sword aforesaid, by the thrusting, stabbing, and penetrating aforesaid, did then and there give unto him the said C. D. in and upon the aforesaid left part of the belly of the said C. D. a little above the navel of the said C. D. one mortal wound, of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid C. D. then and there instantly died, and so the said L. M. then and there, in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder the said C. D. against the peace of our said lord the king, his crown and dignity.—And the said jurors further say, upon their oath aforesaid, that N. O. of —, yeoman, and P. Q. of —, yeoman, were feloniously present, with drawn swords, at the time of the felony and murder aforesaid, in form aforesaid committed, that is to say, on the said, &c. at — aforesaid, in the county aforesaid, then and there comforting, abetting, and aiding the said L. M. to do and commit the felony and murder aforesaid, in manner aforesaid, against the peace of our said lord the king, his crown and dignity. And moreover, the jurors aforesaid, upon their oath aforesaid, do say, that the said L. M. N. O. and P. Q. had not, nor any of them had, nor as yet have or hath, any goods or chattels, lands, or tenements, within the county aforesaid, or elsewhere, to the knowledge of the said jurors. [Or, “and the jurors aforesaid, upon their oath aforesaid, do say, that the said L. M. A. B. at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of B. C.]

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In witness whereof, as well the aforesaid coroner as the jurors aforesaid, have to this inquisition put their seals on the day and year and at the place first above-mentioned.

A. B.	Coroner.
C. D.	} Jurors.
E. F.	
G. H.	
I. K.	
&c.	

PRESENTMENTS BY A JUDGE OR JUSTICE.

Presentment of
a judge of a road
being out of re-
pair, on 13 G. 3.
c. 78. s. 24 (a).

Nottinghamshire. Be it remembered, that at the assizes and general session of oyer and terminer of our lord the king, holden at Nottingham in and for the county of Nottingham, on Thursday, the fifteenth day of March, in the thirty-second year of the reign of our sovereign lord George the Third, king of Great Britain, &c. before the right honorable Sir James Eyre, knight, lord chief baron of our lord the king of his Court of Exchequer; the honorable Sir Alexander Thomson, knight, one of the barons of our said lord the king of the same court, and others their fellows, justices of our said lord the king appointed to take and hold the said assizes in and for the said county, and also to hear and determine all treasons, murders, felonies, and other misdemeanors committed within the same county; I, the said Sir Alexander Thomson, by virtue of, and pursuant to the power and authority given me in and by an act of parliament made and passed in the thirteenth year of the reign of our said lord the king, intituled, "An act to explain, amend, and reduce into one act of parliament, the statutes now in being for the amendment and preservation of the public highways within that part of Great Britain called England, and for other purposes," do upon my own view this day taken present, that from the time whereof the memory of man is not to the contrary, there was and yet is a certain common and ancient king's highway leading from —, in the county of —, towards and unto Nottingham in the —, used for all the liege subjects of our said lord the king, with their horses, coaches, carts, and carriages, to go, return, pass, and repass at their will and pleasure, and that a certain part of the same king's common highway, situate, lying, and being in the parish of —, in the said county of Nottingham, to wit, &c. was, and yet is very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king through the same way with their horses, coaches, carts, and carriages, could not, nor yet can go, return, pass, and repass as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway, going, returning, passing, and

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repassing, and against the peace of our said lord the king, his crown and dignity; and that the inhabitants of the said parish of —, in the said county of Nottingham, the same common highway so as aforesaid in decay, ought to repair and amend, and still of right ought to repair and amend when and so often as it shall be necessary. In testimony whereof, I, the said Sir Alexander Thomson, have to these presents set my hand and seal, this fifteenth day of March, one thousand seven hundred and ninety-two.

ALEXANDER THOMSON, (L.S.)

Middlesex. At the general quarter sessions of the peace of our lord the king, held for the said county at —, in the said county on Tuesday, the — day of —, in the — year of the reign of —, before — and —, esquires, and others their companions, justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, A. B. esquire, one of the justices of our said lord the king assigned for the purposes aforesaid, by virtue of an act made in the thirteenth year of the reign of his late majesty king George the Third, "For the amendment and preservation of the highways," upon his own view [or if it is upon information of the surveyor, then say, "upon information on oath to him given by C. D. surveyor of the highways, for the parish of —, in the said county,"] doth present, that from the time whereof the memory of man is not to the contrary (b), there was, and

Presentment by a justice of a road being out of repair, under 13 Geo. 3. c. 78. (a).

[11]

(a) See form on ancient highway acts, 2 Saund. 157, 8. The stat. 13 Geo. 3. c. 78. s. 24. gives a judge of assize or justice jurisdiction. The form for not repairing is prescribed by the statute, Schedule, No. 32, see also Burn, J. Highways, Turnpike, VI. Williams, J. Highways, XXXVII. See also Dick. Sess. 138 to 142. 13 East, 258. The presentment must show that highway is in parish, Cowp. 111; and if it be respecting a road against a smaller district than a parish, it must be stated ex-

pressly how the township, &c. is liable, 2 T. R. 513. See the various forms of indictments for not repairing, post. In case of a presentment for not repairing, the form, being prescribed by the act, need not conclude, contrary to the statute, but for a nuisance or other offence the presentment must so conclude, and must follow the language of the act, 13 East, 258.

(b) It is not necessary thus to allege that the way was immemorial, 3 T. R. 265.

yet is, a certain common and ancient king's highway, leading from the town of —, in the said county, towards and unto —, within the same county, used for all the king's subjects with their horses, coaches, carts, and carriages to go, return, and pass at their will, and that a certain part of the same king's common highway, commonly called —, situate, lying, and being in the parish of —, in the same county, containing in length — yards, and in breadth — feet, on the — day of —, in the — year of the reign of —, and continually afterwards until the present day, was, and yet is very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, so that the subjects of the king through the same way, with their horses, coaches, carts, and carriages, could not, during the time aforesaid, nor yet can go, return, or pass, as they ought and were wont to do, to the great damage and common nuisance of all the king's subjects, through the same highway, going, returning, and passing, and against the peace of our said lord the king (*a*), and that the inhabitants of the parish of — aforesaid, in the county aforesaid, the said common highway so in decay, ought to repair and amend when and so often as it shall be necessary. In testimony whereof, the said A. B. to these presents, hath set his hand and seal, this — day of —, in the year aforesaid.

A. B. (L. S.)

INFORMATIONS, QUI TAM, AT SESSIONS.

Informations, qui tam, at quarter sessions (*b*).

[12]

Westmoreland. Be it remembered, that A. B. of —, in the county of —, gentleman, who, as well for our sovereign lord the now king, as for himself, doth prosecute in this behalf, cometh before the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of Westmoreland; and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county

(*a*) In general the presentment should conclude against the statute, &c. 13 East, 258, *et supra*, 10. a. f. The presentment is traversable generally, 3 Burr. 1530.

(*b*) See form, Cro. C. C. 8th edit. 237. Burn, J. Information. Williams, J. Information. See another form for exercising a trade, not having served an apprenticeship, post.

committed, at their general quarter sessions of the peace holden at —, in and for the said county, on —, the — day of —, in the — year of the reign of, &c. in his proper person, and as well for our said lord the king as for himself, giveth the court here to understand and be informed, that C. D. late of the parish of —, in the county of Westmoreland, yeoman, on, &c. at, &c. aforesaid, not regarding the laws and statutes of our said lord the king, but intending to, &c. with force and arms, &c. [*here insert the offence with the same precision as in an indictment*], against the form of the statute in that case made and provided, whereupon the aforesaid A. B., as well for the said lord the king as for himself, prayeth the advice of the court in the premises; and that the aforesaid C. D. may forfeit the sum of £—, according to the form of the statute aforesaid, and that he, the same A. B. may have one moiety thereof, according to the form of the said statute; and also that the aforesaid C. D. may come here into court, to answer concerning the premises, and there are pledges of prosecuting, to wit, John Doe and Richard Roe: and hereupon it is commanded to the said C. D. that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to the said lord the king as to the said A. B. who, as well for the said lord the king as for himself, doth prosecute of and concerning the premises, and further to do and receive what the said court shall consider in this behalf.

CHAPTER II.

*INDICTMENTS, &c. FOR OFFENCES AGAINST GOD,
RELIGION, AND PUBLIC WORSHIP.*

Indictment at
common law for
verbal blasphemy
of God, our Sa-
viour, and the
Holy Ghost^(a).

MIDDLESEX. The jurors for our lord the king upon their oath present, that T. D. late of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving and intending to scan-

(a) See precedents, Trem. P. C. 225, 226. Blasphemy against God or the Christian religion, is indictable at common law, 1 East, P. C. 3. 3 Keb. 607. 2 Wooddes. 512. 4 Bla. Com. 59. Bac. Abr. Heresy, C. 1 Stra. 416. 2 Stra. 789. 3 B. & A. 161, 7. 1 B. & C. 26. As to the nature of the punishment, see 3 Keb. 621. 1 Bla. Rep. 395. This offence is punishable by fine and imprisonment, and for a second offence the Court may, at their discretion, either fine and imprison, or adjudge the defendant to be banished for such number of years as they think fit. 60 Geo. 3. c. 8. s. 4. With respect to libels, or verbal slanders on the *Trinity*, see 1 Stra. 416, and 2 Stra. 789. It was enacted, by 9 & 10 W. 3. c. 32, that if any person professing the Christian religion shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy TRINITY to be God, or shall assert or maintain that there are more Gods than ONE, or shall deny the Christian religion to be true, or the Holy Scriptures, of the Old and New Testament to be of Divine Authority, and shall be

convicted thereof upon indictment or information in any of his majesty's courts at Westminster, he shall, for the first offence, be rendered incapable of holding any office, or forfeit any he may hold; and shall, for the *second*, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, and shall suffer imprisonment without bail. But provided the delinquent shall, within four months after the first conviction, publicly renounce his errors in open court, he shall be discharged *for that once* from all disabilities. This statute was repealed, as far as it affects *Unitarians only*, by 53 Geo. 3. c. 160. Prosecutions for reviling the Trinity seem to have been generally framed on the construction of the common law. Against persons denying the Scriptures to be the word of God, the stat. 9 & 10 W. 3. still continues in force. It has not however altered the common law as to the offence of blasphemy, but only given a cumulative punishment. It is, therefore, still an offence at the common law to publish a blasphemous libel. 3 B. & A. 161. A publication stating Jesus Christ to be an imposter and a

dalize and vilify the true and Christian religion, as received and publicly professed within this realm of England; and to blaspheme God and our Lord Jesus Christ the Saviour of the world, on, &c. at, &c. aforesaid, having and holding in his hands a certain cup of wine, unlawfully, wickedly, and blasphemously, in the presence and hearing of divers liege subjects of our said lord the king, spoke, pronounced, and with a loud voice published these profane and blasphemous words following, that is to say, "Here's a health to Father, Son, and Holy Ghost," (meaning Almighty God, Jesus Christ the Saviour of the world, and the Holy Spirit) and immediately thereupon, then and there drank the wine from the said cup, to the great dishonor of Almighty God, in contempt and disgrace of the Holy Trinity, to the great scandal of the profession of the Christian religion, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

[Commencement of information, as ante, 6.] That *Daniel Isaac Eaton*, late, &c. bookseller, Being an evil-disposed and

For publishing a blasphemous libel, viz. Third Part of Paine's *Age of Reason*, on the Christian Religion, the Bible, and our Saviour (a).

murderer, in principle, is a libel at common law. And it should seem the 53 Geo. 3. c. 160. does not alter the common law, but only removes the penalties imposed upon persons denying the Trinity, by 9 & 10 W. 3. c. 32, and extends to such persons the benefits conferred upon all other Protestant Dissenters by 1 W. & M. s. 1. c. 18. 1 B. & C. 26.

(a) See other precedents of indictments for *written* libels on the Christian religion, Trem. P. C. 43, 45. 3 Mod. 68. Co. Ent. 352, 3, and precedents of indictments for verbal slander on Christian religion, West. 334, 355. Cro. Jac. 421. 2 Rol. Abr. 78. Precedent of indictment on 1 Eliz. c. 2. for using other prayers in the church than in the Prayer-Book, 2 Show. 437. 3 Mod. 79. This statute was repealed as far as relates to Protestant Dissenters and Catholics, by 31 Geo. 3.

c. 32. s. 3. The above information was framed upon that against Paine, for the "Age of Reason," see also 1 East, P. C. 5. It is founded on the principles of the common law as recognized in the case of the King v. Taylor, 1 Vent. 293. 3 Keb. 607. 1 East, P. C. 3, &c. 4 Bla. Com. 44, that Christianity is part of the law of England. The general law as to this offence, as collected from the case of the King v. Hoolston, 2 Stra. 831. Fitzgib. 64. Barnard. 162, is, that it is illegal to write against Christianity in general, that it is also illegal to write against any one of its evidences or doctrines so as to manifest a malicious design to undermine it altogether; but that it is not illegal to write on controverted points, whereby it is possible some evidence of Christianity may be affected.

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wicked person, and disregarding the laws and religion of this realm, and wickedly and profanely intending to bring the holy scriptures and the Christian religion into disbelief and contempt among all the liege subjects of our said lord the king, did heretofore, to wit, on, &c. at, &c. unlawfully and wickedly print and publish, and cause to be printed and published, a certain scandalous, impious, blasphemous, and profane libel, of and concerning the holy scriptures and the Christian religion, containing therein amongst other things divers scandalous, impious, blasphemous, and profane matters of and concerning the Holy Scriptures and the Christian religion, in one part thereof according to the tenor and effect following (that is to say) But the case is, that people have been so long in the habit of reading the Books called the Bible (meaning that part of the Holy Bible called the Old Testament,) and Testament (meaning the New Testament,) with their eyes shut and their senses locked up, that the most stupid inconsistencies have passed on them for truth and imposition for prophecy. The all-wise Creator hath been dishonored by being made the author of fable, and the human mind degraded by believing it. And in another part thereof, according to the tenor and effect following (that is to say), I forbear making any remark on this abominable imposition of Matthew, (meaning the holy evangelist Saint Matthew), the thing glaringly speaks for itself. It is priests and commentators that I rather ought to censure for having preached falsehood so long, and kept people in darkness with respect to those impositions; I am not contending with those men upon points of doctrine, for I know that sophistry has always a city of refuge. I am speaking of facts, for, wherever the thing called a fact is a falsehood, the faith founded upon it is delusion, and the doctrine raised upon it not true. Ah! reader, put thy trust in thy Creator, and thou wilt be safe; but if thou trusteth to the book called the Scriptures (meaning the Holy Scriptures) thou trusteth to the rotten staff of fable and falsehood. And in another part thereof, according to the tenor and effect following, (that is to say) I have now, reader, gone through and examined all the passages which the four books of Matthew, Mark, Luke, and John (meaning the four holy gospels) quoted from the Old Testament, and call them prophecies of Jesus Christ: when I first sat down to this examination I expected to find cause for some censure, but little did I expect to find them so utterly destitute of truth and of all pretensions to it, a I have shewn them to be; the practice which the writers of those

books employ, is not more false than it is absurd. They state some trifling case of the person they call Jesus Christ, and then cut out a sentence from some passage of the Old Testament, and call it a prophecy of that case ; but when the words thus cut out are restored to the place they are taken from, and read with the words before and after them, they give the lie to the New Testament : a short instance or two of this will suffice for the whole. And in another part thereof, according to the tenor and effect following, (that is to say) these repeated forgeries and falsifications create a well-founded suspicion that all the cases spoken of concerning the person called Jesus Christ are made cases, on purpose to lug in, and that very clumsily, some broken sentences from the Old Testament, and apply them as prophecies of those cases ; and that so far from his being the Son of God, he did not exist even as a man ; that he is merely an imaginary or allegorical character, as Apollo, Hercules, Jupiter, and all the deities of antiquity, were ; there is no history written at the time Jesus Christ is said to have lived, that speaks of the existence of such a person even as a man. Did we find in any other book, pretending to give a system of religion, the falsehoods, falsifications, contradictions, and absurdities which are to be met with in almost every page of the Old and New Testament, all the priests of the present day, who supposed themselves capable, would triumphantly show their skill in criticism, and cry it down as a most glaring imposition ; but, since the books in question belong to their own trade and profession, they, or at least many of them, seek to stifle every inquiry into them, and abuse those who have the honesty and courage to do it ; and in another part thereof, according to the tenor and effect following, (that is to say) they tell us that Jesus rose from the dead and ascended into heaven, it is very easy to say so, a great lie is as easily told as a little one, but if he had done so, those would have been the only circumstances respecting him that would have differed from the common lot of man, and, consequently, the only case that would apply exclusively to him, as prophecy would be some passage in the Old Testament that foretold such things of him, but there is not a passage in the Old Testament that speaks of a person who, after being crucified, dead, and buried, should rise from the dead and ascend into heaven. Our prophecy-mongers supply the silence ; the Old Testament guards upon such things, by telling us of passages they call prophecies, and that falsely so, about Joseph's dreams, old clothes, broken bones, and such like trifling stuff. And in another part

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Second count.

thereof, according to the tenor and effect following, (that is to say) Now, had the news of salvation by Jesus Christ been inscribed on the face of the sun and the moon, in characters that all nations would have understood, the whole earth had known it in twenty-four hours, and all nations would have believed; whereas, though it is now almost two thousand years since, as they tell us, that Christ came upon earth not a twentieth part of the people of the earth know any thing of it, and among those who do, the wiser part do not believe it. I have now, reader, gone through all the passages called prophecies of Jesus Christ, and shown there is no such thing; I have examined the story told of Jesus Christ, and compared the several circumstances of it with that revelation, which, as Middleton wisely says, God has made to us of his power and wisdom, in the structure of the universe, and by which every thing ascribed to him is to be tried, the result is, that the story of Christ has not one trait, either in its character or in the means employed, that bears the least resemblance to the power and wisdom of God, as demonstrated in the creation of the universe: all the means are human means, slow, uncertain, and inadequate to the accomplishment of the end proposed, and therefore the whole is a fabulous invention, and undeserving of credit; the priests of the present day profess to believe it, they gain their living by it, and they exclaim against something they call infidelity; I will define what it is, he that believes in the story of Christ is an infidel to God. To the high displeasure of Almighty God, to the great scandal of the Christian religion, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general of our said lord the king, who, for our said lord the king in this behalf prosecutes, further gives the court here to understand and be informed, that the said Daniel Isaac Eaton further impiously and profanely devising, and intending as aforesaid, did afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, unlawfully and wickedly print and publish, and cause to be printed and published, a certain other scandalous, impious, blasphemous, and profane libel, of and concerning the Holy Scriptures and the Christian religion, containing therein, amongst other things, certain scandalous, impious, blasphemous, and profane matters and things, of and concerning the Holy Scriptures and the Christian religion, to the tenor and effect following, (that is to say) These repeated forgeries and falsifications create a well-

founded suspicion, that all the cases spoken of, concerning the person called Jesus Christ, are made cases on purpose to bring in, and that very clumsily, some broken sentences from the Old Testament, and apply them as prophecies of those cases; and that so far from his being the Son of God, he did not exist even as a man; that he is merely an imaginary or allegorical character, as Apollo, Hercules, Jupiter, and all the deities of antiquity, were. There is no history written at the time Jesus Christ is said to have lived, that speaks of the existence of such a person even as a man. Did we find in any other book pretending to give a system of religion, the falsehoods, falsifications, contradictions, and absurdities, which are to be met with in almost every page of the Old and New Testament, all the priests of the present day who supposed themselves capable, would triumphantly show their skill in criticism, and cry it down as a most glaring imposition; but since the books in question belong to their own trade and profession, they, or at least many of them, seek to stifle every inquiry into them, and abuse those who have the honesty and the courage to do it. [18]

To the high displeasure of Almighty God, to the great scandal of the Christian religion, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general Third count, of our said lord the king, who, for our said lord the king in this behalf prosecutes, further gives the court here to understand and be informed, that the said Daniel Isaac Eaton, further impiously and wickedly devising and intending to bring the Christian religion into contempt and disbelief among the liege subjects of our said lord the king, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, did unlawfully and wickedly print and publish, and cause to be printed and published, a certain other scandalous, impious, blasphemous, and profane libel, of and concerning the history of our Saviour Jesus Christ, containing therein, among other things, certain scandalous, impious, blasphemous, and profane matters, of and concerning the history of our Saviour Jesus Christ, to the tenor and effect following, (that is to say) Now, had the news of salvation by Jesus Christ been inscribed on the face of the sun and the moon, in characters that all nations would have understood, the whole earth had known it in twenty-four hours, and all nations would have believed it; whereas, though it is now almost two thousand years

since, as they tell us, Christ came upon earth, not a twentieth part of the people of the earth know any thing of it, and among those who do, the wiser part do not believe it. I have now, reader, gone through all the passages called prophecies of Jesus Christ, and shown there is no such thing. I have examined the story told of Jesus Christ, and compared the several circumstances of it with that revelation, which, as Middleton wisely says, God has made to us of his power and wisdom, in the structure of the universe; and by which, every thing ascribed to him is to be tried. The result is, that the story of Christ has not one trait, either in its character or in the means employed, that bears the least resemblance to the power and wisdom of God, as demonstrated in the creation of the universe: all the means are human means, slow, uncertain, and inadequate to the accomplishment of the end proposed, and, therefore, the whole is a fabulous invention, and undeserving of credit. The priests of the present day profess to believe it, they gain their living by it, and they exclaim against something they call infidelity. I will define what it is, he that believes in the story of Christ is an infidel to God. To the high displeasure of Almighty God, to the great scandal of the religion of this realm, as by law established, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general of our said lord the king, who, for our said lord the king, in this behalf prosecutes, further gives the court here to understand and be informed, that the said Daniel Isaac Eaton, further impiously and profanely devising to bring that part of the Holy Scriptures called the New Testament, and also the Christian religion, into disbelief and contempt, among the liege subjects of our said lord the king, did afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, unlawfully and wickedly print and publish, and cause to be printed and published, a certain other scandalous, impious, blasphemous, and profane libel, of and concerning the said New Testament and the Christian religion, containing therein, amongst other things, certain scandalous, impious, blasphemous, and profane matters and things, of and concerning the said New Testament and the Christian religion, to the tenor and effect following: (that is to say) For my own part, I do not believe that there is one word of historical truth in the whole book (meaning that part of the Holy Scriptures called the New Tes-

Fourth count.

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tament). I look upon it at best to be a romance, the principal personage of which is an imaginary or allegorical character, founded upon some tale, and in which the moral is in many parts good, and the narrative part very badly and blunderingly written. To the high displeasure of Almighty God, to the great scandal of the Christian religion, to the evil example of all other persons, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general of our said lord the king, who, for our said lord the king prosecutes in this behalf, for our said lord the king further gives the court here to understand and be informed, that the said Daniel Isaac Eaton, further impiously and wickedly devising and intending to bring the Holy Scriptures into disbelief and contempt among the liege subjects of our said lord the king, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, did unlawfully and wickedly print and publish, and cause to be printed and published, of and concerning the Holy Scriptures, a certain other scandalous, impious, blasphemous, and profane libel, containing therein, amongst other things, divers scandalous, impious, blasphemous, and profane matters, of and concerning the Holy Scriptures, in one part thereof, according to the tenor and effect following: (that is to say) But the case is, that people have been so long in the habit of reading the books called the Bible and Testament, with their eyes shut, and their senses locked up, that the most stupid inconsistencies have passed on them for truth, and imposition for prophecy, the all-wise Creator hath been dishonored by being made the author of fable, and the human mind degraded by believing it. And in another part thereof, according to the tenor and effect following: (that is to say) As to the New Testament, (meaning that part of the Holy Scriptures called the New Testament) if it be brought and tried by that standard, which, as Middleton wisely says, God has revealed to our senses, of his Almighty power and wisdom in the creation and government of the visible universe, it will be found equally as false, paltry, and absurd, as the Old (meaning that part of the Holy Scriptures called the Old Testament.) To the high displeasure of Almighty God, to the great scandal of the Christian religion, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity. Whereupon, &c. [*Conclusion of information as ante, 6.*]

Fifth count.

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Indictment at common law, against a Sabbath breaker and profaner of the Lord's day, in keeping open shop (a).

[*Commencement of indictment as ante*, 2.] That C. D. late of, &c. butcher, on, &c. and continually afterwards until the day of the taking of this inquisition at, &c. was and yet is a common Sabbath breaker and profaner of the Lord's day commonly called Sunday; and that the said C. D. on the said, &c. being the Lord's day, and on divers other days and times being the Lord's days during the time aforesaid, at, &c. in a certain place there called Clare-market, did keep a common public and open shop, and in the same shop did then, and on the said other days and times being the Lord's days, there openly and publicly sell, and expose to sale, flesh meat, to divers persons to the jurors aforesaid as yet unknown, to the evil example of all others, to the common nuisance of all the liege subjects of our said lord the king, and against the peace of our said lord the king, his crown, and dignity.

On 23 Eliz. c. 1. s. 5. for not going to church for a month (b).

Wilts. The jurors, &c. that A. B. of M. in the said county, gent. on, &c. being of the age of sixteen years and upwards, did not repair to his parish church of M. aforesaid,

(a) See the precedent in Cro. C. C. 7th edit. 529. omitted in the 8th. *As to the offence*, according to 2 Stra. 702. 2 Sess. C. 224. 1 Taunt. 134. it is not an offence at common law to sell goods on a Sunday, but publicly keeping an open shop seems to be indictable, see 4 Bla. Com. 63. 1 East P. C. 5. It is said in Hawk. b. 1. c. 6. s. 6. that the selling meat on a Sunday is no offence at the common law, yet, that if the offender keep open shop, the usual method is to indict at the sessions for the nuisance. The 13 Geo. 3. c. 80. enacts, that a party may be indicted at the sessions for the third offence, in killing game on a Sunday or Christmas Day. But most of the various acts of profaning the Sabbath, are punishable summarily before magistrates, see Burn, Williams, and Dickenson's

Works, Justices, tit. "Lord's Day." and Hawk. b. 1. c. 6. 29 Car. 2. c. 7.

(b) This form is from Jacob's Dic. Church, see other forms of indictments and pleas, West, 92. 95. 240. 366. 7. Trem. P. C. 267. Hans. 390. 11 Co. 56. The above form is founded on 23 Eliz. c. 1. s. 5. This is still an indictable offence, though prosecutions by indictment are rare, see the statutes and cases, 1 East P. C. 10 to 23. Hawk. b. 1. c. 10. Bac. Ab. Heresy, D. Burn, Just. and Dick. Just. Lord's Day. Williams, Just. Sabbath. The statute 29 Eliz. c. 6. s. 6, provides, that the indictment need not mention that the offender had no reasonable excuse for his absence, or that he was within England, but he must shew this in his plea. The statute 3 James 1. c. 4. s. 16, provides, that no proceedings on the

or to any other church, chapel, or usual place of common prayer and divine service at any time within the space of one month next after the said day of, &c. in the year aforesaid, but did willingly and obstinately, without any lawful or reasonable excuse, forbear to do the same, contrary to the form of the statute in such case made and provided, in contempt of our said lord the king and his laws, and against the peace, &c.

[*Commencement of indictment as ante, 2.*] On, &c. being Sunday, with force and arms, at, &c. in the parish church there, during the celebration of divine service, the bench of one A. B. gentleman, there being, from its ancient and proper place, unlawfully, and unjustly did take and remove, and also then and there, with force and arms unlawfully, unjustly, and irreverently did disturb and hinder one E. F. clerk, then being curate of the parish church aforesaid, and in the execution of his office, and in the reading of divine service, in contempt of the laws of this realm, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity.

Indictment at common law for misbehaviour at church, and disturbing the curate whilst reading divine service (a).

[*Commencement of indictment as ante, 2.*] That C. D. late of, &c. on, &c. with force and arms, at the parish aforesaid,

Indictment on 5 Ed. 6. c. 4, for striking a person with a weapon in a church yard (b)

above statutes shall be reversed for any defect of form other than by direct traverse of the party's not having been at church, &c. The offence need not be alleged in the county where the party was at the time, being a mere nonfeasance and properly speaking not committed any where, 1 East P. C. 18. Hawk. b. 1. c. 10. s. 2. 5. Bac. Abr. Heresy, D. 7. Pleas, &c. Various bars and excuses may be pleaded to prosecutions under these statutes. By s. 24, of the stat. 1 Eliz. c. 2, punishment by the ordinary is a bar to further proceedings. 1 East P. C. 19. Stat. 23 Eliz. c. 1. s. 5, only affects persons above 16 years of age. An indictment for any first offence may

be avoided by conformity, and all penalties prevented by shewing a sufficient excuse for absence. And Catholic and Protestant Dissenters may plead the acts of Toleration, and of 31 Geo. 3, to almost all prosecutions under these statutes. *Evidence.* Proof of absence from the party's own parish church is, it is said, sufficient to throw the onus upon him of proving where he went to church, 1 East P. C. 19.

(a) See the precedent, Trem. P. C. 239.

(b) See the precedents, Cro. C. C. 107. West, 91. 93. 1 East, P. C. 410, 11. Hawk. b. 1. c. 63. s. 23 to 29. Lord Mansfield considered this to be an offence at common law,

in the county aforesaid, in a certain churchyard belonging to the same parish, and there situate, maliciously did strike one A. B. spinster, with a certain weapon, made of iron and steel, called a hanger, which he the said C. D. then and there had and held in his right hand, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown, and dignity.

The like with an intent to strike (a).

With his right hand did draw a certain weapon, called a hanger, with an intent to strike one A. B. with the same weapon, against the form of the statute, &c. and against the peace of our said lord the king, his crown, and dignity.

1 Burr. 243, where the operation of the statute 5 Ed. 6. c. 4, is considered. See also Com. Dig. tit. Cemetery, A. 3. This statute enacts, "that if any person shall maliciously strike another with any weapon in any church or churchyard, or shall draw any weapon in any church or churchyard, to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of twelve men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of oyer and terminer, or justices of peace in their sessions, by force of this act, shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off, and if the person or persons so offending have none ears whereby he or they should receive such punishment as is before declared, that then he or they to be marked and burned in the cheek with an hot iron having the letter F, whereby he or they may be known to be Fray-makers or Fighters, and besides that, every such person to be

and stand *ipso facto* excommunicated, and be excluded from the fellowship and company of Christ's congregation." The last part of the punishment prescribed is no part of the judgment to be pronounced by the common law courts, 1 East P. C. 410, 11. Hawk. b. 1. c. 63. s. 28. The indictment must shew that the defendant smote with a weapon, Cro. Car. 464, 5. It is said that he who strikes in a church can no way excuse himself by shewing that the other assaulted him, Hawk. b. 1. c. 63. s. 28. If defendant be convicted, in order to prevent cutting off ears, an application must be made to the attorney-general, as in 1 East P. C. 409, 10.

(a) If any weapon is drawn with an intent to strike another, the indictment is then to be framed as in this precedent, Cro. C. C. 8th edit. 107. It must then be alleged that the weapon was drawn with intent to strike, &c. barely charging that one drew his dagger against another, is not sufficient to bring the case within the statute, 2 Leon. 188. Cro. Eliz. 465. 2 Hale, 171. 1 East P. C. 411.

With force and arms, at the parish aforesaid, in the county aforesaid, in a certain churchyard belonging to the said parish, and there situate, maliciously with his right hand did draw a certain weapon made of iron and steel, called a hanger, with an intent to strike one A. B. with the same weapon, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown, and dignity. And the jurors aforesaid do further present, that the said C. D. on the said fourth day of April, in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, to wit, in a certain churchyard belonging to the same parish, and there situate, maliciously did strike the said A. B. with the said weapon, which he the said C. D. then and there had and held in his right hand, against the form, &c.

The like for maliciously drawing and striking (a).

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Suffolk. The jurors for our lord the king upon their oath present, that C. D. late of, &c. and F. L. late of, &c. with force and arms at, &c. wilfully, maliciously, wickedly, irreligiously, in contempt of public worship and of Almighty God, did shoot off and discharge divers, to wit, two guns, then and there respectively loaded with gunpowder and leaden shot, at, and to, and against divers, to wit, six windows of and belonging to a certain church and mansion-house of God, situate, standing, and being in the parish of — aforesaid, and then and there being the church of the same parish, the same then and there being in the possession of E. F. clerk, as rector of the rectory of the said parish, and did thereby and therewith, then and there wilfully, maliciously, wickedly, irreligiously, and in contempt of public worship and of Almighty God, break to pieces, shatter, and damage the glass, to wit, 100 panes of glass, of great value, to wit, &c. of, and belonging to the said windows, in contempt of religion and public worship, and of Almighty God, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity. [A second count was added, merely stating,

Indictment for breaking church windows by firing a gun against them (b).

(a) This is recommended as the safer form, Cro. C. C. 8th edit. 107.

(b) It has been doubted whether such an indictment is sustainable, as being for a mere trespass, see 3 Burr. 1701. 1703. 1706. 1731. see

precedents for breaking windows of a house, Cro. C. C. 7th edit. 745. Cro. C. A. 485, 4 Wentw. 309. If the fact, it should be shewn that the hearing of divine service was obstructed.

that the windows belonged to the parish church, and omitting the statement that it was the mansion-house of God, and in possession of the rector.]

The like in another form (a).

That C. D. late of, &c. esq. and E. F. late of the same parish, in the same county, gentlemen, on, &c. with force and arms at, &c. unlawfully and unjustly did shoot off and discharge a gun, then and there loaded with gunpowder and leaden shot, at, to, and against a window of the parish church of —, in the county aforesaid, and by force of the gunpowder and leaden shot so shot off and discharged out of the said gun by them, the said C. D. and E. F. unlawfully and unjustly then and there did break to pieces, shatter, and damage the glass, to wit, 200 panes of glass of great value, to wit, of, &c. of and belonging to the windows of the said church of the parish of — aforesaid, in the county aforesaid, in contempt, &c. to the evil example, &c. and against the peace, &c.

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Indictment for disturbing a dissenting congregation on toleration act, 1 W. & M. c. 18. s. 18. (b).

[*Commencement of indictment as ante, 2.*] That the defendants being persons of evil minds and dispositions, and not regarding the laws and statutes of this realm, not fearing the pains and penalties therein contained, but unlawfully and wilfully intending maliciously and contemptuously to disquiet and

(a) This form was recommended as preferable to the above, by a very eminent crown lawyer, he at the same time doubting whether any indictment would lie.

(b) See form, 5 T. R. 542. Peake Rep. 132. and 4 Maule & Selw. 508, and where held that indictment is removable from quarter sessions. The 1 W. & M. c. 18. s. 18. enacts, "that if any person or persons, at any time or times after the 10th day of June, do and shall willingly and of purpose maliciously or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher,

such person or persons upon proof thereof before any justice of the peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of twenty pounds to the use of the king's and queen's majesties, their heirs and assigns for ever." The 52 Geo. 3. c. 155. s. 12. enacts, "that if any person or persons do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting,

disturb a certain congregation of Protestant Dissenters from the church of England, assembled for the purpose of religious worship (a), on, &c. (b), with force and arms, at, &c. did wilfully and of purpose maliciously and contemptuously *come into a* (c), certain chapel, situate, &c. the same chapel then and still being duly certified, registered, and allowed, pursuant

assembly, or congregation of persons assembled for religious worship, permitted or authorized by this act, or any former act or acts of parliament, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace, by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of fifty pounds, to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of *forty pounds.*" See a precedent on the last act, post, 27, 8. It was held, in Peake Rep. 132. that it is not necessary in support of the above indictment, to prove the taking of the oath required by the act; but if proved it must be by the record and not by parol evidence. It is not necessary to prove malice, and a person claiming an interest may be indicted, Peake Rep. 132. An indictment found at sessions may be removed into the King's Bench by prosecutor, before verdict, 5 T. R. 542. 4 M. & S. 508.

Each defendant is liable to the penalty of twenty pounds, 5 T. R. 542. When there is any doubt as to the proof of the defendant's having committed the disturbance by entering *into* the place of worship, the indictment should be framed, and a count should be added on the 52 Geo. 3. c. 155. s. 12. as post, 27, 8, which subjects the offenders to the greater penalty of forty pounds, and if several, concurred, the indictment may be at common law for a conspiracy and riot, as post, 29. As to an information in the King's Bench for disturbing a dissenting congregation, see 3 Burr. 1683.

(a) This allegation of bad character and intent seems unnecessary, ante, vol. i. 223, 245.

(b) Some indictments here state "being the Lord's Day, commonly called Sunday," see 2 Stark. 650, but this seems unnecessary.

(c) It is necessary in an indictment, on 1 W. & M. c. 18. s. 18, to insert this averment, but not so in indictment on 52 Geo. 3. c. 155. s. 12, see post, 27, 8. In other precedents it is sometimes in one count stated, that the defendant made the disturbance "during the performance and celebration of divine service in the said meeting-house," and the means of disturbance are stated.

to the statute in such case made and provided, and did then and there wilfully and of purpose during the time of divine worship (*a*), maliciously and contemptuously disquiet and disturb a certain congregation of Protestant Dissenters from the church of England, being then and there assembled in the aforesaid chapel for the purpose of religious worship, in contempt of public worship, to the evil example of all others, against the form of the statute in such case made and provided, and against the peace, &c.

The like in another form (*b*).

That A. B. late of, &c. C. D. late of, &c. and E. F. late of, &c. being disorderly and ill-disposed persons, on, &c. the same being the Lord's day, commonly called Sunday, with force and arms unlawfully, willingly, and of purpose, maliciously and contemptuously came into a congregation of Protestant Dissenters, being subjects of our said lord the present king, then lawfully assembled, and met for religious worship in the dwelling-house of J. M. in the said parish of B. aforesaid, the same congregation then and there being a congregation for religious worship, permitted and allowed by a certain act of parliament made and passed in the first year of the reign of their said late majesties king William and queen Mary; and the said place of the said meeting of the congregation, then and there being duly certified and registered, according to the said act; and did then and there unlawfully, wilfully, and of purpose maliciously and contemptuously disquiet and disturb the same congregation then and there assembled and met as aforesaid, against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid do further present, that the said A. B., C. D., and E. F. being such disorderly and ill-disposed persons as aforesaid, on, &c. the same day being the Lord's day, commonly called Sunday, with force and arms, unlawfully, willingly, and of purpose, maliciously and contemptuously did enter and come into a certain room or passage of the dwelling-house of the said I. M. adjoining to a certain other room in the same dwelling-house, in which last-mentioned room, a certain congregation of Protestant Dissenters, subjects of our said lord the present king, were then and there lawfully assembled, and met for religious worship, the same congregation then and there being a congregation for religious worship, permitted and al-

Second count.

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(*a*) Vide post, 27 *a*. note (*b*).

(*b*) See notes to the last precedent, and 2 Stark. 650.

lowed by a certain act of parliament made and passed in the said first year of the reign of our said late majesties king William and queen Mary, and the said place of the said meeting of the said congregation then and there being duly certified and registered according to the said act, did then and there unlawfully, willingly, and of purpose, and maliciously, irreverently, and contemptuously make divers great cries, noises, and disturbances, to disturb and disquiet, and did then and there disturb and disquiet the same congregation so then and there assembled and met as aforesaid, against the form, &c. and against the peace, &c.

[*Commencement as ante*, 2.] Middlesex. That at the general quarter sessions of the peace of our sovereign lord George the Third, king of Great Britain, &c. holden for the county of Middlesex, at Hicks's Hall, in Saint John Street, in the said county, by adjournment, on the — day of —, in the — year of the reign of our sovereign lord George the Third, king of Great Britain, &c. before Sir John Hawkins, knight; C. D. esquire; and others, their fellows, then justices of our said lord the now king, assigned to keep the peace, in the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, A. B. clerk, teacher, or preacher to a congregation of Protestants, dissenting from the church of England, scrupling infant baptism, pursuant to the statute in that case made and provided, did certify to his majesty's justices of the peace for the said county, assembled in quarter sessions, aforesaid, that he had appointed a certain house, situate at —, in Staines, in the parish of —, in the county of Middlesex, to assemble and meet in and for religious worship, which at the same general quarter sessions of the peace, was registered and recorded in manner and form aforesaid, according to the direction of the said act. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on, &c. the same being the Lord's day, about the hour of seven, in the afternoon of the same day, a congregation of Protestants, dissenting from the church of England, of which one R. B. was then the teacher or preacher, were assembled for the public worship and service of Almighty God, in the

The like for disturbing a congregation of Anabaptists, on 1 W. & M. c. 18. s. 13. (a).

[27]

(a) See form, 4 Wentw. 363. See Willes, 463, as to Baptists.

Second count.

house aforesaid, being the same house so certified, registered, and recorded as aforesaid; and that, &c. [*state names of defendants*], not regarding the laws and statutes of this realm, afterwards, to wit, on, &c. with force and arms, at the same parish and county, willingly, and of purpose maliciously and contemptuously did come into the said congregation, (being then a congregation allowed by the act of parliament aforesaid), and disquiet and disturb the same congregation *during the time of divine service (a)*, by then and there talking, cursing and swearing, with a loud voice, and also by talking with a loud voice to the said R. B. then and there being in the pulpit (the doors of the said meeting-house and place where the said congregation was so assembled, not being then locked, barred, or bolted,) to the evil example, &c. against the peace, &c. and also against the form of the statute, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid [*defendants*] on, &c. with force and arms at, &c. aforesaid, did willingly, and of purpose maliciously, and contemptuously, come into a certain congregation of Protestants, dissenting from the church of England, and scrupling infant baptism, then and there assembled, in the meeting-house of R.B. there situate, for the worship and service of Almighty God, which said congregation was then and there permitted, by a certain act of parliament, made in the first year of the reign of their late majesties king William and queen Mary of England, and so forth, entitled, "An act for exempting their majesties Protestant subjects, dissenting from the church of England, from the penalties of certain laws," and of which congregation the said R. B. was then and there teacher or preacher, and they, the said [*defendants*] did then, to wit, at the same time, when they so came into the said congregation, there disquiet and disturb the said congregation, by talking, laughing, cursing, and swearing, with a loud voice, the said R. B. then and there being in the pulpit, (the said meeting-house where the congregation so assembled, being then and there long before registered and recorded, according to the directions of the said last-mentioned act of parliament, and the doors of the said meeting-house, and place, where the said congregation was so assembled, not being then locked, barred, or bolted,) to the evil example, &c. against the peace, &c. and against the form, &c.

(a) These words "during, &c." seem unnecessary, though usual, see 5 T. R. 542.

That C. B. the elder, late of, &c. and C. B. late of, &c. For disturbing on, &c. with force and arms, at, &c. did *during the time of divine worship* (b), unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain congregation of Protestant Dissenters from the church of England, being then and there lawfully assembled for the purpose of religious worship, in a certain chapel, situated, standing, and being, in the parish aforesaid, in the county aforesaid, the said chapel being then and there duly certified and registered, pursuant to the statute in such case made and provided, in contempt of public worship, to the evil example, &c. against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. B. the elder, and C. B. the younger, afterwards (to wit), on the said, &c. with force and arms, at, &c. did, *during the time of divine worship* (c), unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain other congregation of Protestant Dissenters from the church of England, being then and there duly and lawfully assembled for the purpose of religious worship, in a certain other chapel, situate, standing, and being in the parish aforesaid, in the county aforesaid, the said last-mentioned chapel, being then and there duly certified and registered pursuant to the statutes in such case made and provided, in contempt of public worship, to the evil example, &c. against the form of the statutes, &c. and against the peace, &c. [Other counts, describing the place of worship as a meeting-house.]

For disturbing
dissenting con-
gregation on
statute 52 G. 3.
c. 155. s. 12 (a).
[28]

Second count.

[Commencement of indictment, as ante, 2.] That C. D. late of, &c. E. F. late of, &c. G. H. late of, &c. and divers other evil-disposed persons, to the number of forty and more, to the jurors aforesaid as yet unknown, being rioters, routers, and disturbers of the peace of our lord the now king, and not regarding the laws and statutes of this kingdom, on, &c. with

At common law
for a riot and
assault in a dis-
senting meeting-
house (d).

(a) See the statute, ante, 24, note (b). This statute extends to all malicious disturbances affecting public worship, whether in or out of the meeting-house. This precedent was obtained from the crown office, 53 Geo. 3. The indictment must, by sect. 17, be brought within six months. In another

indictment the first and second counts were precisely as in the last precedent.

(b) These words "during, &c." seem unnecessary, see 5 T. R. 542.

(c) This allegation is not necessary, see preceding note.

(d) See another precedent, 2 Stark. 650.

[29]

force and arms, at, &c. unlawfully, riotously, routously, and tumultuously did assemble and meet together to disturb the peace of our said lord the king, and being so assembled together, did then and there unlawfully, riotously, routously, and tumultuously disturb several of the liege subjects of our said lord the king, peaceably assembled and met together for the purpose of hearing divine service in a certain dissenting meeting-house there situate, by riotously and routously shouting, hallooing, and making a great noise, whereby the said divine service was greatly interrupted; and that the said C. D. one I. L. who was then and there attending the said divine service in the said meeting-house, and in the peace of God and our said lord the king, then and there being, unlawfully and riotously did beat, wound, and ill-treat, so that his life was greatly despaired of, to the great disturbance of, and terror of divers of his majesty's subjects, to the great damage of the said I. L. and against the peace, &c. [*Second count for a common assault.*]

Information at common law for a conspiracy to disturb a dissenting congregation. First count for a conspiracy, stating all the overt acts (a).

That James Churchyard, late of, &c. [*and several others named*] being persons of unruly, turbulent, and wicked minds and dispositions, and contriving and intending to break and disturb the peace of our said lord the king, and to oppress, aggrrieve, injure, annoy, disturb, and harass divers of the liege subjects of our said lord the king, being Protestants dissenting from the church of England, on, &c. with force and arms at, &c. unlawfully, wickedly, and designedly did conspire, combine, confederate, and agree together, and with divers other persons, as much as in them lay, as well by force, tumult, noise, and disturbance, as by divers subtle contrivances and artifices to interrupt, disturb, and disquiet a certain congregation of his majesty's Protestant subjects dissenting from the church of England, permitted by a certain act of parliament (b), made in the first year of the reign of their late majesties king William and queen Mary, intituled, "An act for exempting their majesties Protestant subjects dissenting from the church of England from the penalties of certain laws;" the said congregation being then and there lawfully assembled together for religious worship, in a certain meeting-house there situate, and which said

(a) This was filed in crown office, Easter term, 51 Geo. 3. As to an information, see 3 Burr. 1683. See notes on

the requisites of indictments for conspiracy, post.

(b) 1 W. & M. c. 18.

meeting-house had been, and then was duly certified and registered, pursuant to the said act of parliament, and also as much as in them, the said [*defendants*] lay, and by the means aforesaid, to prevent and hinder the said congregation from meeting and assembling together, and at other times in the said meeting-house for religious worship, and from performing divine service therein; and that the said [*defendants*] in pursuance of, and according to the conspiracy, combination, confederacy, and agreement, so as aforesaid before had, afterwards, to wit, on, &c. aforesaid, and on divers other days and times, to wit, on, &c. [*naming several days*] with force and arms, at, &c. aforesaid, together with divers other persons, being rioters, routers, and disturbers of the peace of our said lord the king, to wit, fifty other persons and upwards, unlawfully, riotously, and routously did assemble and gather themselves together, to break and disturb the peace of our said lord the king, and to carry into effect their unlawful and wicked conspiracy, combination, confederacy, and agreement aforesaid, and being so assembled and gathered together as aforesaid, on the days and times aforesaid, for the purpose aforesaid, divers very great riots, routs, tumults, noises, and disturbances did make, and cause to be made, in, near, and about the said meeting-house, [a certain congregation of his majesty's Protestant subjects dissenting as aforesaid, and permitted as aforesaid, on the respective days aforesaid, then and there being lawfully assembled together for religious worship in the said meeting-house, so certified and registered as aforesaid] and on the respective days aforesaid there unlawfully, riotously, and routously did, willingly and of purpose, maliciously and contemptuously, disquiet and disturb the said congregation so assembled, during the time of divine service in the said meeting-house, and unlawfully, riotously, and routously did fire off, and cause to be fired off and thrown into the said meeting house, and also into the common highway there, divers squibs and fire-works, and unlawfully, riotously, and routously did assault, beat, wound, and ill-treat divers persons of the said congregation, to wit, one, &c. [*naming them*] and unlawfully, riotously, and routously did cast and throw stones, dirt, mud, human dung, and other filth at, and against the said, &c.; [*naming them*] and unlawfully, riotously, and routously on the respective days aforesaid, by such force and violence as aforesaid, as well as by divers subtle contrivances and artifices, interrupt, disquiet, and disturb such congregation as aforesaid, so assembled as aforesaid in the said

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Second count for
a conspiracy to
disturb, but not
stating overt acts.

[31]

Third count for a
conspiracy to dis-
turb, stating
other overt acts.

meeting-house for religious worship as aforesaid, during the time of divine service in the said meeting-house, and did, by the means aforesaid, endeavour to prevent and hinder the said congregation from assembling together for religious worship in the said meeting-house; by means of which said premises the said congregation on the days and times aforesaid, at the parish aforesaid, in the county aforesaid, were greatly interrupted, disquieted, disturbed, alarmed, and terrified, and greatly obstructed, prevented, and hindered in assembling in the said meeting-house for religious worship, and from performing divine service therein, in contempt, &c. to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court hereto understand and be informed, that the said [*defendants*] being such persons as aforesaid, and contriving and intending as aforesaid, on, &c. aforesaid, at, &c. aforesaid, unlawfully, wickedly, and designedly did conspire, combine, confederate, and agree together, and with divers other persons as much as in them lay, as well by force, tumult, noise, and disturbance, as by divers subtle contrivances and artifices to interrupt, disturb, and disquiet the said congregation of his majesty's Protestant subjects, dissenting from the church of England, permitted by the said act of parliament, whenever the said congregation should be there assembled together for religious worship in the said meeting-house there situate, and so certified and registered as aforesaid, and as much as in them lay by the means aforesaid, to prevent and hinder the said congregation from meeting and assembling together in the said meeting-house for religious worship, and from performing divine service therein, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court here to understand and be informed, that the said [*defendants*] being such persons as aforesaid, and contriving and intending to break and disturb the peace of our said lord the king on, &c. aforesaid, with force and arms at, &c. aforesaid, unlawfully, wickedly, and designedly did conspire, combine, confederate, and agree together, and with divers other persons as much as in them lay, as well by force, tumult, noise, and disturbance, as by divers subtle contrivances and artifices to interrupt, disturb, and disquiet a certain congregation of his majesty's Protestant subjects, dissenting from the church of England, permitted by

a certain act of parliament, made in the first year of the reign of their late majesties king William and queen Mary, intituled, &c. whenever the said congregation should be there lawfully assembled together for religious worship in a certain meeting-house there situate, and which said meeting-house had been, and then was duly certified and registered pursuant to the said act of parliament; and that the said [*defendants*] in pursuance of, and according to the conspiracy, combination, confederacy, and agreement between them, so as last aforesaid before had, afterwards, to wit, on, &c. aforesaid, and on divers other days and times between that day and the third day of December, in the fifty-first year aforesaid, with force and arms at, &c. aforesaid, unlawfully, riotously, and routously did make and cause divers great riots, routs, noises, and disturbances near and about the said meeting-house, the said congregation of his majesty's Protestant subjects, dissenting as aforesaid, and permitted as aforesaid, being then, and on the days and times aforesaid, there lawfully assembled together for religious worship in the said meeting-house, so certified and registered as last aforesaid, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court here to understand and be informed that the said [*defendants*] being such persons as aforesaid, and contriving and intending as aforesaid, on, &c. aforesaid, with force and arms at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, and with divers other persons as much as in them lay, as well by force and violence as by divers unlawful contrivances and artifices, to prevent and hinder a certain congregation of his majesty's Protestant subjects, dissenting from the church of England, and permitted by law, from lawfully meeting and assembling together for religious worship in a certain meeting-house, situate in the parish aforesaid, in the county aforesaid, and duly certified and registered according to law; and that the said [*defendants*] in pursuance of, and according to the conspiracy, combination, confederacy, and agreement between them so as aforesaid before had, afterwards, to wit, on, &c. and on the other days and times aforesaid, with force and arms at, &c. aforesaid, did, by force and violence, as well as by divers subtle artifices and contrivances, endeavour to prevent and hinder the said congregation from assembling together for religious worship in the said meeting-house, so certified and registered as aforesaid, in con-

Fourth count for a conspiracy to prevent assembly at meeting-house, stating overt acts generally.

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Fifth count for a conspiracy to prevent certain persons from assembling at meeting-house stating overt acts.

tempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court here to understand and be informed that the said [*defendants*] being such persons as aforesaid, and contriving and intending as aforesaid, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, and with divers other persons as much as in them lay, to prevent and hinder divers of his majesty's Protestant subjects, dissenting from the church of England, to wit, one, &c. [*namc several*] from assembling in the said meeting-house, so certified and registered as aforesaid for religious worship according to law; and also to prevent and hinder divine service from being performed therein, and in pursuance of, and according to the conspiracy, combination, confederacy, and agreement, so as last aforesaid before had, on the same day and in the year aforesaid, with force and arms, at, &c. aforesaid, unlawfully did make, and cause to be made, divers riots, routs, noises, and disturbances near the said meeting-house, and did thereby, and by divers other acts of violence endeavour to terrify, alarm, and intimidate the said, &c. [*the persons named*] and prevent and hinder them from assembling together in the said meeting-house for religious worship as aforesaid, or having divine service performed therein, to the great damage of the said [*the persons named*] in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court here to understand and be informed that the said [*defendants*] being such persons as aforesaid, and contriving and intending as aforesaid, on, &c. last aforesaid, with force and arms at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, and with divers other persons to instigate, incite, and encourage divers persons, whose names are unknown to the said coroner and attorney of our said lord the king, to assemble and gather themselves together at, &c. aforesaid, to break and disturb the peace of our said lord the king, and to make and cause to be made divers riots, routs, tumults, noises, disturbances, and violations of the peace of our said lord the king, and in pursuance of, and according to the conspiracy, combination, confederacy, and agreement, so as last aforesaid before had, on, &c. aforesaid, with force and arms, at, &c.

Sixth count, conspiracy to cause a riot with overt acts.

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aforesaid, unlawfully did instigate, incite, and encourage divers persons, whose names are unknown as aforesaid, to assemble and gather themselves together at the parish aforesaid, in the county aforesaid, to break and disturb the peace of our said lord the king, and did then and there, by such instigation, incitement, and encouragement as aforesaid, make, and cause to be made, divers riots, routs, tumults, noises, and disturbances of the peace of our said lord the king, at, &c. aforesaid, in contempt, &c. to the evil example, &c. and against the peace, &c. *And* the said coroner and attorney for our said lord the king who prosecute as aforesaid, further gives the court here to understand and be informed that the said [*defendants*] on, &c. aforesaid, and on divers other days and times, to wit, on, &c. [*setting out the several days as in the first count,*] with force and arms, at, &c. aforesaid, together with divers other persons, being rioters, routers, and disturbers of the peace of our said lord the king, to wit, fifty other persons and upwards, unlawfully, riotously, and routously did assemble and gather themselves together, to break and disturb the peace of our said lord the king, and being so assembled and gathered together as aforesaid, on the days and times aforesaid, divers very great riots, routs, tumults, noises, and disturbances did make, and cause to be made, in, near, and about the said meeting-house, so certified and registered as aforesaid, a certain congregation of his majesty's Protestant subjects, dissenting as aforesaid, and permitted as aforesaid, being on the respective days aforesaid there lawfully assembled together for religious worship in the said meeting-house; and that the said [*defendants*] together with the said other persons on the respective days aforesaid, there unlawfully, riotously, and routously, did willingly and of purpose, maliciously and contemptuously disquiet and disturb such congregation so assembled as aforesaid, during the time of divine service in the said meeting-house, and unlawfully, riotously and routously did fire off, and cause to be fired off, and thrown into the said meeting-house, and also into the common highway there, divers squibs and fire-works, and unlawfully, riotously, and routously did assault, beat, wound, and ill-treat divers persons of the said congregation, to wit, the said, &c. [*naming them*] and unlawfully, riotously, and routously did cast and throw stones, dirt, mud, human dung, and other filth at, and against the said, &c. [*naming them*] and unlawfully, riotously, and routously, on the respective days aforesaid, by such force and violence as aforesaid, did endeavour to prevent and

Seventh count for a riot and disturbance of assembly at meeting-house.

Eighth count for
a common riot.
See post as to in-
dictments for
riots.

hinder the said congregation from assembling together for religious worship in the said meeting-house, in contempt, &c. to the great terror and affrightment of all the liege subjects of our said lord the king there being, to the great damage of the said, &c. [*naming them*] to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court here to understand and be informed, that the said [*defendants*] on, &c. aforesaid, with force and arms at, &c. aforesaid, together with divers other persons being rioters, routers, and disturbers of the peace of our said lord the king, to wit, fifty other persons and upwards, unlawfully, riotously, and routously did assemble and gather themselves together, to break and disturb the peace of our said lord the king, and being so assembled and gathered together as last aforesaid, then and there unlawfully, riotously, and routously did continue and remain for a long space of time, to wit, for the space of one hour then next following, making and causing to be made divers very great riots, routs, tumults, noises, and disturbances, to the great terror and affrightment of all the liege subjects of our said lord the king there being, in contempt, &c. to the evil example, &c., against the peace, &c. The 9th, 10th, 11th and 12th counts, like the 8th, but for riots on other days.

CHAPTER III.

INDICTMENTS, &c. FOR OFFENCES AGAINST MORALITY AND DECENCY.

MIDDLESEX. The jurors for our lord the king upon their oath present, that C. D. late of, &c. on, &c. with force and arms, &c. at, &c. aforesaid, the church-yard of and belonging to the parish church of the same parish there situate, unlawfully, voluntarily (*b*), and wilfully did break and enter, and the grave there, in which one A. B. deceased, had lately before then been interred and then was, with force and arms unlawfully, voluntarily (*b*), wilfully, and indecently did dig open, and afterwards, to wit, on the same day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, the body of her, the said A. B. out of the grave aforesaid, unlawfully, voluntarily, wilfully, and indecently did take and carry away (*c*), to the great indecency of Christian burial, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity (*d*).

For digging up and carrying away a dead body out of a church-yard (*a*).

(*a*) See form, Cro. C. C. 8th edit. 108. This is indictable as a misdemeanor at common law, 2 T. R. 733. Leach. C. L. 4th edit. 497. S. C. 2 East, P. C. 652. 2 Bla. Com. 429. 4 Bla. Com. 236. 1 Hale, 515. As to the right and duty to bury, Com. Dig. Cemetery, B. Willes, 538, where an information was granted by K. B. against a rector for not burying a poor parishioner. An indictment lies for a conspiracy to prevent a burial, 2 T. R. 734. and next precedent; and it is a misdemeanor to arrest a dead body, and thereby prevent a burial in due time, 4 East, 465. See how the duty to bury dead bodies

cast on shore is enforced by 48 Geo. 3. c. 75. If the shroud, coffin, &c. be stolen, an indictment for the felony is sustainable, and the property should be laid in the representatives, 2 East, P. C. 652. 1 Hale, 515. 4 Bla. Com. 236.

(*b*) This word, though in the old precedents, seems unnecessary.

(*c*) Proof of the slightest removal of the body would suffice. The punishment is fine or imprisonment, or both, 2 T. R. 733.

(*d*) If the name of the deceased person be unknown or doubtful, add a count describing it accordingly.

Against the master of a work-house and a surgeon for a conspiracy to prevent the body of a poor person who had died in the workhouse, from being buried, that it might be dissected (a).

Middlesex. The jurors for our lord the king upon their oath present, that R.W. late of, &c. in, &c. labourer, and Thomas Young, late of, &c. surgeon, being evil-disposed persons, and having no regard for the religion, laws, and customs of this realm, but unlawfully and wickedly devising, contriving, and intending, not only to prevent the interment and burial of a certain dead body, to wit, the body of M. J. spinster, then lately deceased, but also to cause and procure the said body of the said M. J. to be dissected, on, &c. with force and arms, at, &c. unlawfully and wickedly did conspire, combine, confederate, and agree together, to cause and procure the said dead body of the said M. J. to be taken and carried away from the work-house for the poor of the said parish of, &c. in, &c. (wherein the said M. J. when living had lately before been kept and maintained as a poor impotent person unable to maintain and provide for herself, and had departed this life) to the dwelling-house of the said T. Y. situate in, &c. in order and for the purpose, that the said dead body of the said M. J. might and should be dissected, and that the said T. Y. in pursuance of, and according to the conspiracy, combination, confederacy, and agreement between him and the said R.W. so as aforesaid before had, afterwards, to wit, on, &c. at, &c. unlawfully and wickedly did cause and procure certain persons, to wit, J.W. &c. &c. &c. to go about the hour of ten at night of the same day, to the work-house of the poor of the parish aforesaid, where the body of the said M. J. then lay, to receive, take, and carry away the said dead body from the work-house aforesaid, to the dwelling-house of him the said T. Y. &c. situate in, &c. in order and for the purpose, that the said dead body might and should be dissected, and that the said J.W. &c. &c. by the procurement of the said T. Y. in pursuance of and according to the conspiracy, combination, confederacy, and agreement aforesaid, did then and there, to wit, on, &c. about the hour of ten at night of the same day, at the said parish of, &c. in, &c. go to the said work-house for the poor of the said parish, for the dead body of the said M. J.; and that the said R.W. then and long before being master of the said work-house, in pursuance of and according to the conspiracy, combination, confederacy, and agreement between him and the said T. Y. so as aforesaid before had, did, then and there, unlawfully and wickedly deliver, and cause to be delivered,

(a) See form, 4 Wentw. 219. R. 734. Willes, 538, and the See the case alluded to in 2 T. note to the last precedent.

the said body of the said M. J. to the said J.W. &c. to take and carry away the same to the aforesaid dwelling-house of the said T. Y. in order and for the purpose, that the said dead body of the said M. J. might and should be dissected, and the said J.W. &c. &c. &c. did then and there receive, take, and carry away the said dead body of the said M. J. from the said work-house, to the aforesaid dwelling-house of the said T. Y. and that the said R.W. and T. Y. in pursuance of and according to the conspiracy, confederacy, combination, and agreement between them so as aforesaid had, did then and there, in manner and by the means aforesaid, unlawfully and wickedly wholly prevent the interment and burial of the said dead body of the said M. J. which of right should and ought to have been done and performed, according to the rites and ceremonies of the church of that part of this realm called England, to the great scandal and disgrace of religion, and in contempt of the laws and customs of this realm, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said R.W. on, &c. was in due manner appointed, according to the directions of a certain act of parliament in that behalf, to superintend, manage, and take care of the poor that then were or should thereafter be in the work-house for the poor of the said parish of, &c. in, &c. and that on, &c. and long before that time, one M. J. a poor impotent person unable to maintain and provide for herself, was kept and maintained in the aforesaid work-house under the superintendence, management, and care of the said R.W. and that on, &c. the said M. J. at, &c. in, &c. to wit, in the aforesaid work-house departed this life, and that the body of the said M. J. should and ought to have been decently interred and buried according to the rites and ceremonies of the church of that part of this realm called England, in the burial-ground belonging to the said parish, and that the said R.W. according to the duty of his said office, should and ought to have caused and procured the said dead body of the said M. J. to have been so decently interred and buried: And the jurors aforesaid, upon their oath aforesaid, do further present, that the said R.W. and the said T. Y. knowing the premises last aforesaid, but the duties of the office of the said R.W. and the laws and customs of this realm in no wise regarding, unlawfully and wickedly contriving and intending, not only wholly to prevent the interment and burial of the said dead body of the said M. J., but also to cause and procure the said

Second count, stating that one of defendants was appointed master, &c. by act of parliament, and that it was his duty, &c.

[38]

Third count, for taking away for the purpose of dissection.

Fourth count, for preventing interment, &c. &c.

dead body to be dissected afterwards, to wit, on, &c. in the twenty-third year aforesaid, with force and arms at, &c. in, &c. the said dead body of the said M. J. then and there being in the said work-house, did unlawfully and wickedly take and carry away, and caused and procured to be taken and carried away, with an unlawful and wicked intention not only to prevent the interment and burial of the said dead body of the said M. J. but also that the said dead body should be dissected, contrary to the duty and office of him the said R. W. to the great scandal and disgrace of religion, in contempt of the laws and customs of this realm, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. *And* the jurors aforesaid, upon their oath aforesaid, do further present, that the said R. W. and T. Y. being evil-minded persons, and having no regard for religion, or the laws and customs of this realm, afterwards, to wit, on, &c. with force and arms at, &c. in, &c. a certain dead body, to wit, the dead body of M. J. then lately deceased, then and there being in the said work-house for the poor of the said parish there situate, unlawfully and wickedly did take and carry away, and caused and procured to be taken and carried away, with an unlawful and wicked intention, to prevent the interment and burial of the said dead body of the said M. J. which should, and ought to have been done and performed according to the rites and ceremonies of the church of that part of this realm called England: and also with an unlawful and wicked intention, that the said dead body of the said M. J. should be dissected, to the great scandal and disgrace of religion, in contempt of the laws and custom of this realm, to the evil and pernicious example, &c. &c. and against the peace, &c. *And* the jurors aforesaid, upon their oath aforesaid, do further present, that the said R. W. and T. Y. being evil-minded persons, and having no regard for religion, or the laws and customs of this realm, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. in, &c. a certain dead body, to wit, the body of M. J. then and there being in the said work-house of the poor of the said parish there situate, unlawfully and wickedly did take and carry away, with an unlawful and wicked intention, to prevent the interment and burial of the said dead body of the said M. J. which ought to have been done and performed according to the rites and ceremonies of the church of that part of this realm called England, to the great scandal and disgrace of religion, in contempt of the

laws and customs of this realm, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

That C. D. late of, &c. on, &c. and on divers other days and times between that day and the day of taking this inquisition, with force and arms at, &c. aforesaid, a certain common bawdy

For keeping a bawdy-house, or other disorderly house (a).

[39]

(a) This is the common printed form used in Middlesex, see other forms in *Ch. C. C.* 8th edit. 302. *Burr.* 1233. *Lewdness.* 2 *Burr.* 1233. held good, *West.* 237. 323. 325. 326. 338. 355. It is not necessary to state particulars, as the names of those who frequented the house, 2 *Burr.* 1232. 1 *T. R.* 752. 754. But evidence of particular instances of illicit intercourse may be given under the general charge, 2 *Atk.* 339. it is not however necessary to prove who frequents the house, for that may be impossible, and if any unknown persons are proved to be there, behaving disorderly, it is sufficient to support the indictment, 1 *T. R.* 754. Any number of persons may be included in the same indictment for keeping different disorderly houses, stating that they "*severally*" kept, &c. 2 *Hale*, 173, 4. 8 *East*, 47.

As to this offence in general, *Bac. Abr. Nuisances*, A. *Hawk.* b. 1. c. 74. *Burr.* J. *Lewdness.* *Williams*, J. *Bawdy-houses.* *Dick.* J. *Lewdness.* 4 *Bl. Com.* 64. 65, n. 12. 25 *Geo.* 2. c. 36. s. 5. s. 9. Keeping a house of ill fame, and encouraging suspicious or disorderly persons to resort thither, is an offence punishable at common law with fine and imprisonment, or other infamous punishment in the discretion of the court, usually imprisonment in case of a mar-

ried woman, and the offenders may be prosecuted by information or indictment. *Hawk.* b. 1. c. 74. *Rep. temp. Hardw.* 278. The statute of 25 *G. 2.* c. 36, provides that unlicensed places of public entertainment shall be considered as disorderly places, and punished as the law directs, and for the encouragement of prosecutions against the keepers of houses of ill fame, enacts, that any two inhabitants of a parish, paying scot and bearing lot, on entering into a recognizance to give evidence, may compel constables to prosecute, and who, on their pursuing the offenders to conviction, shall have all reasonable expences paid, and the said inhabitants receive ten pounds each as a reward from the overseers of the poor. And on the constables entering into a recognizance to prosecute, the persons accused may be bound over to appear at the quarter sessions or assizes. A constable neglecting his duty forfeits twenty pounds. Any person managing a house of ill fame shall be taken to be the keeper thereof. Evidence on trial may be given by persons though they inhabit the same parish, or have entered into a recognizance at the commencement of the action, and no indictment shall be removed by *certiorari*. By the 3 *Geo.* 4. c. 114. the party convicted of keeping a com-

Second count, for keeping a disorderly house.

house, situate, &c. (a), unlawfully and wickedly did keep and maintain; and in the said house, for filthy lucre and gain, divers evil-disposed persons, as well men as women, and whores, on the days and times aforesaid, as well in the night as in the day, there unlawfully and wickedly did receive and entertain, and in which said house, the said evil-disposed persons and whores, by the consent and procurement of the said C. D. on the days and times aforesaid, there did commit whoredom and fornication, whereby divers unlawful assemblies, riots, routs, affrays, disturbances, and violations of the peace of our said lord the king, and dreadful filthy and lewd offences in the same house, on the days and times aforesaid, as well in the night as in the day, were there committed and perpetrated, to the great damage and common nuisance of all the liege subjects of our said lord the king, in manifest destruction, ruination, and subversion of youth, and other people, in their manners, conversation, estate, and obedience, and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D. on, &c. aforesaid, and on the other days and times aforesaid, with force and arms at, &c. aforesaid, a certain common, ill-governed, and disorderly house, unlawfully and wickedly did keep and maintain, and in the said house, for filthy lucre and gain, certain evil-disposed persons, as well men as women, of evil name, fame, and conversation, to frequent and come to-

mon bawdy or other disorderly house, may, as the court shall think fit, be sentenced to imprisonment, with hard labour, for any term not exceeding the term for which the court may now imprison for such offences, either in addition or lieu of any other punishment.

In 2 Lord Raym. 1197, and 1 Salk. 382, it was held that no indictment would lie for *being a common bawd*, though unquestionably it would for keeping a disorderly house, and that a bare solicitation of chastity is not indictable. In the same case it was also resolved, that if a person be only a lodger, and make use of her room for disorderly purposes, she would be guilty of keeping

a bawdy-house as much as if she were the proprietor of the whole house. In 1 Salk. 384, it was decided that a wife as well as a husband may be indicted for *keeping* a disorderly house, because the charge does not respect the *ownership* but the *criminal management* of the house. The indictment is removable at the instance of the prosecutor but not of defendant, 5 T. R. 626. As to open fornication, see precedent, West, 239. 1 Bla. Rep. 439. Hawk. b. 2. c. 61. s. 4. Wood's Inst. b. 3. c. 3.

(a) *Semble*, it is necessary to state the local situation, and therefore it may be prudent here to say "situate," &c. 1 T. R. 754.

gether on the days and times aforesaid, there unlawfully and wickedly did cause and procure, and the said persons in the said house at unlawful times, as well in the night as in the day, on the days and times aforesaid, there to be and remain drinking, tippling, cursing, swearing, quarrelling, and otherwise misbehaving themselves, unlawfully and wickedly did permit and suffer, &c. [*Conclusion as in first count.*]

[*Commencement of indictment as ante, 2.*—That A. H. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed, and disorderly house, and in the said house, for his own lucre and gain, certain persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together, then, and on the said other days and times, there unlawfully and wilfully did cause and procure, and the said men and women in the said house, at unlawful times, as well in the night as in the day, then, and on the said other days and times, there to be and remain, drinking, tippling, whoring and misbehaving themselves unlawfully, and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the liege subjects of our said lord the king, there inhabiting, residing, and passing, to the evil example, &c. and also against the peace, &c.

The like for keeping a disorderly house (a).

[41]

[*Commencement of indictment as ante, 2.*—That John —, the younger, late of Brighton, in the county of Sussex, taylor, being a person of a wicked, depraved, and abandoned mind and disposition, and wholly lost to a due sense of decency and morality, and intending as much as in him lay to vitiate and corrupt the morals of his majesty's liege subjects on, &c. with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and wilfully, did expose and exhibit himself naked, and in an indecent posture and situation near to, and in front of divers houses of the liege subjects of our said lord the king, situate at, &c. aforesaid, and also near to a certain public, and

For bathing publicly near public ways and habitations (b).

(a) See form, Cro. C. C. 8th edit. 302, and Burn, J. Lewdness, 2 Burr. 1233, and notes to the last precedent.

(b) See the case 2 Campb. 89. 1 Sid. 168. 1 Keb. 620. 1 Sess. C. 231. 2 Stra. 790.

common king's highway, there and also in the presence of divers liege subjects of our said lord the king, both male and female, with intent to vitiate and corrupt the morals of his majesty's liege subjects, to the great scandal and subversion of decency, religion and good order, to the great corruption of the morals and manners of his majesty's liege subjects, to the evil example, &c. and against the peace, &c. *And* the jurors aforesaid, upon their oath aforesaid, do further present, that the said John —, being a person of such wicked, depraved, and abandoned mind and disposition, as aforesaid, and intending, as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and wilfully, did expose himself naked, to divers of his said majesty's liege subjects, to the great scandal and subversion of religion and good order, to the great corruption of the morals and manners of his majesty's liege subjects, to the evil example of, &c. against the peace of, &c.

Second count.

For indecently
exposing private
parts to public
view (a).

[42]

That James —, late of, &c. being a person of most wicked, lewd, lascivious, depraved, and abandoned mind and disposition, and wholly lost to all sense of decency, morality, and religion, and intending as much as in him lay, to vitiate and corrupt the morals of his majesty's liege subjects, and to stir up and excite in their minds filthy, lewd, and unchaste desires and inclinations, on, &c. with force and arms at, &c. unlawfully, wickedly, deliberately and wilfully, did expose and exhibit his private parts, in a most indecent posture, situation, and practice, to divers of the liege subjects, both male and female, of our said lord the king, with intent to vitiate and corrupt the morals of his majesty's liege subjects, and to stir up and excite in their minds, filthy, lewd, and unchaste desires and inclinations, to the great scandal and subversion of religion and good order, to the great corruption of the morals and manners of his majesty's liege subjects, to the evil example of, &c. and against the peace, &c. *And* the jurors aforesaid, upon their oath aforesaid, do further present, that the said James —, being a person of such wicked, depraved, and abandoned mind, and disposition as aforesaid, and intending as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and

Second count.

wilfully did expose and exhibit himself naked, to divers of his said majesty's liege subjects, both male and female, &c.—[*Conclusion as in first count.*]

That C. D. late of, &c. in, &c. being a scandalous and evil-disposed person, and devising, contriving, and intending the morals of divers liege subjects of our lord the king to debauch and corrupt, on, &c. at, &c. on a certain public and common highway, there situate, in the presence of divers liege subjects of our said lord the king, then and there being, and within sight and view of divers other liege subjects of our said lord the king, in, along, and on the said highway then and there being, passing and repassing, unlawfully, wickedly, and scandalously did expose to the view of the said persons so present, and so being, passing, and repassing as aforesaid, the body and person of him the said C. D. naked and uncovered, for a long space of time, to wit, for the space of two hours then following, to the great scandal of the said liege subjects of our said lord the king, to the manifest corruption of their morals, in contempt of our said lord the king and his laws, to the evil, &c. against the peace, &c.

The like in a more modern form.

That Edward —, late of, &c. bookseller, being a person of a wicked and depraved mind and disposition, and most unlawfully, wickedly, and impiously devising, contriving, and intending to vitiate and corrupt the morals of all the subjects of our said present sovereign lord the king, and to debauch, poison and infect the minds of all the youth of this kingdom, and to bring them into a state of wickedness, lewdness, debauchery, and brutality, on, &c. with force and arms, at, &c. did unlawfully, wickedly, and impiously publish, and cause and procure to be published, a certain wicked, nasty, filthy, bawdy, and obscene libel, entitled, "The Frisky Songster," in which said libel are contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, that is to say, in one part thereof, according to the tenor following, viz. [*here state the words*] and in another part thereof (*b*), according to the tenor following, viz. [*here*

Against a man for publishing obscene libels and prints (*a*).

(a) The defendant was convicted and imprisoned. An obscene book is punishable as a libel, 2 Stra. 789. Vide also

4 Burr. 2527. 2574.

(b) This mode of stating a separate part is necessary, 1 Campb. 352.

Second count

(a).

[43]

state the words.] To the high displeasure of Almighty God, to the scandal and reproach of the Christian religion, in contempt of our said present sovereign lord the king, and his laws, and to the great offence of all civil governments, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown, and dignity. *And* the jurors, &c. do further present that the said —, being such person^a as aforesaid, and most unlawfully, wickedly, and impiously devising, contriving, and intending, as aforesaid, the sooner to accomplish, perfect, and bring to effect his said most unlawful and wicked purposes, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, a certain other wicked, nasty, filthy, bawdy, and obscene libel, entitled, “The Frisky Songster,” did unlawfully, wickedly, and impiously sell and publish, and did cause and procure to be sold and published, in which said libel last abovementioned, are contained, amongst other things, divers wicked, false, feigned, impious, impure, bawdy, and obscene matters, wherein are represented the most gross and filthy scenes of lewdness and obscenity, and in terms and expressions not fit or proper to be named or mentioned in any language, or in any court of Justice, and most manifestly tending to scandalize and debase human nature, and to destroy and totally to deface all those fundamental principles and notions of modesty, decency and virtue, which are so proper and necessary to be kept up and preserved in all civil societies; by the publishing of which said libel last abovementioned, he the said defendant hath most unlawfully, wickedly, and impiously attempted, and as much as in him lay endeavoured to spoil and corrupt the morals of all the subjects of our said present sovereign lord the king, and to debauch, poison, and infect the minds of all the youth of this kingdom, and to bring them into a state of wickedness, lewdness, and brutality * to the high displeasure of Almighty God, to the scandal and reproach of the Christian religion; in contempt of our said present sovereign lord the king, and his laws, to the great offence of all civil governments, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. *And* the jurors aforesaid, upon their oath aforesaid, do further present, that the said —, being such person as aforesaid, most

Third count.

(a) Quare if this count be sustainable.

unlawfully, wickedly, and impiously devising, contriving, and intending as aforesaid, and the sooner to accomplish, perfect, and bring to effect his said most unlawful and wicked purposes, afterwards, that is to say, upon, &c. with force and arms, at, &c. did unlawfully, wickedly, and impiously sell and publish, and cause and procure to be sold and published, a certain other wicked, nasty, filthy, bawdy, and obscene libel, entitled, * "The Voluptuarian Museum," in which said last-mentioned libel are contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, bawdy, and obscene prints, representing and exhibiting men and women, with their private parts, in most indecent postures and attitudes, and representing men and women in the act of carnal copulation, in various attitudes and postures; and in which said last-mentioned libel are also contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, that is to say, in one part thereof, according to the tenor following, viz. [*here state libellous words*] and in another part of the said last-mentioned libel, according to the tenor following [*here state other libellous matter*] to the high displeasure, &c. [*conclusion as in second count from the asterisk. There was a fourth count for another libel.*] And the jurors, &c. that the said defendant, being such person as aforesaid, and most unlawfully, wickedly, and impiously devising, contriving, and intending as aforesaid, the sooner to accomplish, perfect, and bring to effect his said most unlawful and wicked purposes, afterwards, to wit, on, &c. with force and arms, at, &c. a certain other wicked, nasty, filthy, bawdy, and obscene libel, entitled, "The Voluptuarian Museum," did unlawfully, wickedly, and impiously publish, and did cause and procure to be published, in which said libel last above-mentioned, are most unlawfully, wickedly, and impudently represented, described, and exhibited, several lewd, gross, nasty, filthy, and obscene figures of men and women, as well in the act of carnal copulation, as in other most lewd, indecent, and unseemly postures and attitudes, not fit or proper to be seen, named, or mentioned in any language, or in any nation professing the Christian religion; to the high, &c.—[*Conclude as in second count from the asterisk.*]

[44]

Fifth count.

[*As in third count to the asterisk.*] "Memoirs of a Woman of Pleasure," in which said last-mentioned libel are contained, amongst other things, divers wicked, false, feigned, lewd, im-

pious, impure, bawdy, and obscene prints, representing and exhibiting men and women, with their private parts, in most indecent postures and attitudes, and representing and exhibiting men and women in the act of carnal copulation, in various attitudes and postures. And in which said last-mentioned libel are contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, that is to say, in one part thereof, according to the tenor following, viz. [*here state libellous matter, and conclude as in second count from the asterisk. Two other counts like 2nd and 5th, on a different libel.*]

For publishing an obscene libel and indecent prints (a).

[45]

That Elizabeth Powell, late of, &c. being a person of a wicked and depraved mind and disposition, and most unlawfully, wickedly, and impiously, devising, contriving, and intending to vitiate and corrupt the morals of all the subjects of our said present sovereign lord the king; and to debauch, poison, and infect the minds of all the youth of this kingdom, and to bring them into a state of wickedness, lewdness, debauchery, and impiety, on, &c. with force and arms, at, &c. did unlawfully, wickedly, and impiously publish and sell, and cause and procure to be published and sold, a certain wicked, nasty, filthy, bawdy, impious, and obscene libel, entitled, "The History of Don B***," in which said libel are contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, that is to say, in one part thereof, according to the tenor following, viz. [*here set out libel.*] And in another part thereof (b), according to the tenor following, viz. [*here state the other libellous part*], to the high displeasure of Almighty God, to the scandal and reproach of the Christian religion, in contempt of our said lord the king, and his laws, and to the great offence of all civil governments, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, further present, that the said Elizabeth Powell being such person as aforesaid, and most unlawfully, wickedly, and impiously contriving, and intending as aforesaid, the sooner to accomplish, perfect, and bring to

Second count.

(a) Defendant confessed the indictment, which was settled by an eminent crown lawyer.

(b) 1 Campb. 352. Antc, 42, n. (b).

effect her said most unlawful, wicked, and impious purposes, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, a certain other wicked, nasty, filthy, bawdy, impious, and obscene libel, did unlawfully, wickedly, and impiously publish and sell, and did cause and procure to be published and sold, in which said libel last above mentioned are contained, amongst other things, divers wicked, false, feigned, impious, impure, bawdy, and obscene matters, wherein are represented the most gross and filthy scenes of lewdness and obscenity, and in *terms and expressions not fit or proper to be named or mentioned in any language, or in any court of justice*, and most manifestly tending to scandalize and debase human nature, and to destroy and totally subvert all principles and notions of modesty, decency, and virtue, which are so proper and necessary to be kept up and preserved in all civil societies, by the publishing of which said last-mentioned libel, she, the said Elizabeth Powell, hath most unlawfully, wickedly, and impiously attempted, and as much as in her lay, endeavoured to spoil and corrupt the morals of all the subjects of our said lord the king, and to debauch, poison, and infect the minds of all the youth of the United Kingdom, and to bring them into a state of wickedness and lewdness; to the high, &c. [*Conclusion as first count.*] And the jurors aforesaid, upon their oath aforesaid, Third count. further present, that the said E. P. being such person as aforesaid, and most unlawfully, wickedly, and impiously devising, [46] contriving, and intending as aforesaid, and the sooner to accomplish, perfect, and bring to effect her said most unlawful and wicked purposes, afterwards, that is to say, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, wickedly, and impiously publish and sell, and cause and procure to be published and sold, a certain other wicked, nasty, filthy, bawdy, impious, and obscene libel, entitled, "The History of Don B***," in which said last-mentioned libel are contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, unnatural, bawdy, and obscene prints, representing and exhibiting men and women, with their private parts, in most indecent postures and attitudes, and representing and exhibiting men and women in the act of carnal copulation, in various attitudes and postures, and also representing and exhibiting men in the act of committing the detestable crime of sodomy. [*Conclusion as in first count.*] And the jurors aforesaid, upon their oath aforesaid, Fourth count. further present, that the said Elizabeth Powell, being such person as

aforesaid, and most unlawfully, wickedly, and impiously contriving, and intending as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, a certain other wicked, nasty, filthy, bawdy, impious, and obscene libel, did unlawfully, wickedly, and impiously sell, and cause and procure to be sold, in which last-mentioned libel are contained, amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, in substance and to the effect following, that is to say, [*here set out the libel.*] To the great displeasure of Almighty God, &c.

For exposing to sale an obscene print (a).

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That G. A. late of London, bookseller, being a scandalous and evil-disposed person, and devising, contriving, and intending the morals as well of youth, as of divers other liege subjects of our said lord the king, to debauch and corrupt, and to raise and create in their minds inordinate and lustful desires, and the clergy of this kingdom to bring into great contempt, hatred, scandal, infamy, and disgrace, on, &c. in a certain open and public shop of him the said G. A. there situate, unlawfully, wickedly, maliciously, and scandalously did sell and utter to one I. A. a liege subject of our said lord the king, a certain lewd, wicked, scandalous, infamous, and obscene print on paper, intituled, "The parson receiving tithes in kind," representing a man in the habit of a clergyman in an obscene, impudent, and indecent posture with a woman, and which said lewd, wicked, scandalous, infamous, and obscene print on paper, is contained in a certain printed pamphlet then and there uttered and sold by him the said G. A. to the said I. A., intituled, "The Covent Garden Magazine; or, Amorous Repository, calculated solely for the entertainment of the polite world, for April, 1773," to the manifest corruption and subversion of youth, and other liege subjects of our said lord the king in their manners and conversation, to the great scandal, infamy, and disgrace of all the clergy of this kingdom, in contempt of our said lord the king and his laws, to the evil, &c. and against the peace, &c.

The like in another form (b).

That John Turner, late of, &c. being a person of a most wicked, lewd, lascivious, depraved, and abandoned mind, and

(a) See form, Cro. C. C. 8th edit. 260. Cro. C. A. 484. This is an offence at common law, punishable as a libel, by information or indictment,

2 Stra. 789. 1 Barn. K. B. 29. (b) This indictment was preferred at Middlesex sessions, A. D. 1806, and defendant was convicted.

disposition, and wholly lost to all sense of decency, chastity, morality, and religion; and being minded and intending, as much as in him lay, to corrupt the morals of his majesty's liege subjects, and to stir up and excite in their minds filthy, lewd, and unchaste desires, and inclinations, on, &c. and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and advisedly, did publish, expose, and shew to the sight and view of many of the liege subjects of our said lord the king, divers, to wit, six obscene, filthy, and indecent prints, representing men and women in attitudes, situations, and practices of great and scandalous obscenity, lewdness, and indecency, to the great scandal and subversion of religion and good order, to the great corruption of the morals and manners of his majesty's liege subjects, to the evil example, &c. and against the peace, &c. *And the* Second count.
 jurors aforesaid, upon their oath aforesaid, do further present, that the said [*defendant*] being a person of such wicked, depraved, and abandoned mind, and disposition as aforesaid, and intending as aforesaid, afterwards, to wit, on, &c. [*another day,*] with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and advisedly, did utter and publish divers, to wit, six other obscene, filthy, and indecent prints, representing men and women in attitudes, situations, and practices of great and scandalous obscenity, lewdness, and indecency, to the great scandal and subversion of religion and good order, to the great corruption, &c. to the evil example, &c. and against the peace, &c.

That J. H. late of, &c. being a person of wicked and depraved mind and disposition, and not regarding the common duties of morality and decency, but contriving, and wickedly intending, as far as in him lay, to debauch and corrupt the morals, as well of youth, as of divers other liege subjects of our said lord the king; and to raise and create in their minds inordinate and lustful desires, on, &c. &c. and from thence until the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully, wickedly, and scandalously did keep and maintain a certain room in and parcel of a certain house there situate, for the purpose of exhibiting and exposing to the sight and view of any person or persons willing and desirous of seeing the same, and paying for their admission into the said room, divers lewd, wicked, scandalous, infamous, bawdy, and obscene

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Against the proprietor of the Metamorphic Gallery for keeping a room for the purpose of exhibiting indecent prints.

Second count, for exhibiting the prints generally.

prints: and in the said room, on the said, &c. and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully, wickedly, and scandalously for lucre and gain did exhibit and expose the said prints, and cause the same to be exhibited and exposed to the sight and view of divers and very many liege subjects of our said lord the king, in contempt of our said lord the king and his laws, in violation of common decency and morality, to the great corruption of youth and increase of lewdness, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James Hitchcock, being a person of a wicked and depraved mind and disposition, and not regarding the common duties of morality and decency, but contriving and wickedly intending as aforesaid, on the said, &c. and on divers other days, &c. with force and arms, at, &c. aforesaid, did unlawfully, wickedly, and scandalously exhibit and publish, and cause to be exhibited and published, for lucre and gain, in a certain room in and parcel of a certain house there situate, to and in the view of divers and very many liege subjects of our said lord the king, divers wicked, scandalous, bawdy, and obscene prints, in contempt of our said lord the king and his laws, in violation of common decency, &c. &c. [as in the first count.]

For buggery with a boy, on 25 H. 8, c. 6. (a).

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That J. K. late of, &c. not having the fear of God before his eyes, nor regarding the order of nature, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. (b) in and upon one T. L. a youth (c) about

(a) This indictment, observing the notes, is similar to that in Co. Ent. 351, b. which was settled on great advice, 1 East, P. C. 480. See also other precedents, Cro. C. C. 8th edit. 6. West, 80. Cro. C. C. 7th ed. 230. Cro. C. A. 17. This offence is felony without clergy, by 25 Hen. 8. c. 6. 5 Eliz. c. 17. 3 & 4 W. & M. c. 9. s. 2. As to the decisions, see 1 East, P. C. 480. 437. Bac. Ab. Sodomy. Hawk. b. 1. c. 4.

1 Hale, 669, 670. Com. Dig. Justices, S. 4. *Quare*, if this offence is within the 25 Hen. 8. c. 6, when committed on a woman, Fortes. 91. If committed on a boy under fourteen, it is felony in the agent only, 1 Hale, 670. 3 Co. Inst. 59.

(b) In Co. Ent. 351, b. it is stated to have been committed, "to wit, in the dwelling-house of one —, there."

(c) In Co. Ent. 351, b. "male child."

the age of seventeen years then and there being, feloniously (*a*) did make an assault, and then and there feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair with the said T. L. and then and there carnally knew the said T. L. and then and there feloniously, wickedly, and diabolically, and against the order of nature, with the said T. L. did commit and perpetrate the detestable and abominable (*b*) crime of buggery (*c*), (not to be named among Christians), to the great displeasure of Almighty God, to the great scandal of all human kind, against the form of the statute, &c. and against the peace, &c.

That R. Wiseman, late of, &c. not having the fear of God before his eyes, nor regarding the order of nature, but being moved and seduced by diabolical instigation, on, &c. with force and arms, at, &c. in a certain room in the workhouse, then situate in the parish aforesaid, in and upon one J. M. spinster, then a virgin of eleven years, in the peace of God and our said lord the king, then and there being, did violently and feloniously make an assault, and then and there the said J. M. in the room aforesaid, did wickedly, diabolically, feloniously, and against the order of nature, carnally know and a venereal affair in the fundament of the said J. M. then and there had; and her the said J. M. then and there wickedly, diabolically, feloniously, and against the order of nature, in the said fundament of her the said J. M. then and there did carnally know, and that sodomitical, detestable, and abominable sin called buggery (not to be named among Christians), then and there with the said J. M. wickedly, diabolically, feloniously, and against the order of nature, committed and perpetrated, to the great displeasure of Almighty God, and disgrace of all human-kind, against the peace, &c. and also against the form, &c.

For sodomy in
and of a girl, on
25 Hen. 8. c. 6.
(*d*).

That D. P. late of, &c. not having the fear of God before his eyes, nor regarding the order of nature, but being moved and

Indictment for
beastiality, on
25 Hen. 8. c. 6.
(*e*).

(*a*) In Co. Ent. 351, *b*. the word "*feloniously*," is here omitted.

(*b*) In Co. Ent. 351, "*abominandum*," meaning "*inhuman*," but now usually called abominable.

(*c*) In Co. Ent. 351, "*called buggery*." This word is material, Fost. 424. 3 Inst. 59. 1 East P. C. 489.

(*d*) See this form, Cro. C. C. 7th edit. 230. An indictment lies for this offence on this statute, Fortes. 91; see notes to the last precedent.

(*e*) See forms, Cro. C. A. 17. Cro. C. C. 8th ed. 86, and the notes to precedent, ante, 48, 9, which are here in most respects applicable.

seduced by the instigation of the devil, on, &c. with force and arms, at, &c. in a certain cowhouse there, with a certain black cow then and there being, feloniously, wickedly, diabolically, and against the order of nature, had a certain venereal and carnal intercourse, and then and there feloniously, wickedly, diabolically, and against the order of nature, carnally knew the said cow; and then and there feloniously, wickedly, and diabolically, and against the order of nature, with the said cow (*a*), did commit and perpetrate that detestable and abominable crime of buggery (not to be named among Christians), to the great displeasure of Almighty God, to the great scandal of all human kind, against the form of the statute, &c. and against the peace, &c.

For an assault on a boy with an intent to commit sodomy (*b*).

That A. B. late of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. aforesaid, in and upon one J. H. (*c*) in the peace of God and our said lord the king, then and there being, did make an assault (*d*), with an intent, that most horrid, detestable, and sodomitical crime (among Christians not to be named), called buggery, with the said J. H. against the order of nature, then and there feloniously, wickedly, and devilishly to commit and do, to the great displeasure of Almighty God, to the great damage of the said J. H. and against the peace of our said lord the king, his crown and dignity. [*A count for a common assault may be added.*] (*e*)

(*a*) In Cro. C. A. 17, the words "with the said cow," are omitted.

(*b*) See forms, Cro. C. C. 7th edit. 167. 8th edit. 61; if it be apprehended that the two acts, to complete the capital offence, cannot be proved (see 1 East P. C. 437, 8, 9. 480,) it may then be advisable to indict for the assault as above, and a count may be added like the next precedent.

(*c*) The precedents in Cro. C. C. 7th edit. 167, and Stark. 387, here say, "an infant of the age of ten years," but this is unnecessary, and see Cro. C. C. 8th edit. 61.

(*d*) The precedents in Cro. C. C. 7th edit. 167. Stark. 387, here state, "and him the said J. H. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of," but these words are not in Cro. C. C. 8th edit. 61, and seem better omitted when they do not accord with the facts. By the 3 Geo. 4. c. 114, this offence, being an attempt to commit a felony, is punishable with imprisonment and hard labour, as the court shall adjudge.

(*e*) Note to Cro. C. C. 7th ed. 167.

That the said C. D. being a person of a most wicked, lewd, and abandoned mind and disposition, and wholly lost to all sense of decency, morality, and religion, and devising, and intending as much as in him lay, to vitiate and corrupt the morals of the said A. B. and to stir up and excite in his mind filthy, lewd, and unchaste desires and inclinations, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, did wickedly and unlawfully solicit and incite, and endeavour to persuade the said A. B. to permit and suffer him the said C. D. then and there feloniously and wickedly to commit and do that detestable and abominable crime (among Christians not to be named) called buggery, with the said A. B. against the order of nature, to the great displeasure of Almighty God, to the great damage of the said A. B. and against the peace, &c.

For soliciting a person to permit defendant to commit buggery with him (a).

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(a) Framed on principle of counts were added for exposing private parts, ante, 41.

CHAPTER IV.

INDICTMENTS, &c. FOR OFFENCES AGAINST
LAW OF NATIONS.

For a libel in French on the then chief consul of France, Bonaparte, tending to create discord between this country and France (a).

[*COMMENCEMENT* of information as ante, 6, and then proceed as follows:—That before and at the times of the printing and publication of the scandalous, malicious, and defamatory libels and libellous matters and things hereinafter next mentioned, there subsisted, and now subsists, friendship and peace between our sovereign lord the king and the French republic, and the subjects of our said lord the king and the citizens of the said republic, and that before and at those times, citizen Napoleon Bonaparte was and is yet first consul of the said French republic, and as such the chief magistrate of the same, to wit, at the parish of Saint Anne, within the liberty of Westminster, in the county of Middlesex; and the said attorney-general of our said lord the king, further giveth the court here to understand and be informed, that Jean Peltier, late of Westminster, in the county of Middlesex, gentleman, well knowing the premises aforesaid, but being a malicious and ill-disposed person, and unlawfully and maliciously devising, and intending to traduce, defame, and vilify the said Napoleon Bonaparte, and to bring him into great hatred and contempt, as well among the liege subjects of our said lord the king, as among the citizens of the said republic, and to excite and provoke the citizens of the said republic, by force and arms, to deprive the said Napoleon Bonaparte of his consular office and magistracy in the said republic, and to kill and destroy the said N. B.; and also unlawfully and maliciously devising as much as in him the said Jean Peltier lay, to interrupt, disturb, and destroy the friendship and peace subsisting between our

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(a) Information against Peltier, filed Mich. T. 43 Geo. 3. The libel must be set forth in the foreign language, and then

translated, 6 T. R. 162; but as to the translation, see 1 Saund. 242, a, note 2. See post, as to libels in general.

said lord the king and his subjects and the said N. B. the French republic, and the citizens of the same republic, and to excite animosity, jealousy, and hatred in the said N. B. against our said lord the king and his subjects, on, &c. at, &c. unlawfully and maliciously did print and publish, and cause and procure to be printed and published, a most scandalous and malicious libel, containing therein, among other things, divers scandalous and malicious matters in the French language, of and concerning the said N. B. (that is to say) in one part thereof to the tenor following, to wit, *Quelle tempêtes, &c.* [*here state a part of the libellous matter in French*] and in another part (a) thereof to the tenor following, *i. e.* *Deja dans sa rage, &c.*; [*here another part of the libellous matter in French was stated*] which said scandalous and malicious words in the French language first above-mentioned and set forth, being translated into the English language, were and are of the same signification and meaning as these English words following, viz. *What frightful tempests growl, &c.*; [*here set forth the translation*] and which said scandalous and malicious words in the French language last above mentioned and set forth, being translated into the English language, were and are of the same signification and meaning as these English words following, that is to say, *Already in his insolent rage, the despot* (meaning the said Bonaparte) *desires, &c.*; [*here set forth the translation of the second libellous part*] to the great scandal, disgrace, and danger of the said N. B. to the great danger of creating discord between our said lord the king and his subjects and the said N. B., the French republic, and the citizens of the said republic, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c.

And the said attorney-general of our said lord the king, for our said lord the king, further giveth the court here to understand and be informed, that the said Jean Peltier, so being such person as aforesaid, and unlawfully and maliciously devising and intending as aforesaid, afterwards, to wit, on, &c. at, &c. aforesaid, unlawfully and maliciously did print and publish, and cause and procure to be printed and published, a certain other scandalous and malicious libel, containing therein, among other things, divers other scandalous and malicious matters in the

Second count.

(a) When different parts of a libel not following each other are set out in one count, each distinct part should be thus described, 1 Campb. 352.

French language, of and concerning the said N. B. in the form of an address to the French people, according to the tenor following, *i. e.* Citoyens la douceur [*here state a different part of the libel*]; which said scandalous and malicious words in the French language last before-mentioned and set forth, being translated into the English language, were and are of the same signification and meaning as these English words following, that is to say, Citizens, the mildness of character and probity that distinguish you among all nations, occasion, &c. [*here set forth translation*]; to the great scandal, disgrace, and danger of the said N. B., the French republic, and the citizens of the said republic, to the evil example of all others, in contempt of our said lord the king and his laws, and against the peace of our said lord the king, his crown and dignity. [*There were three other counts stating other parts of the libel in the same manner.*]

For a libel, accusing the Russian ambassador of having sent advice to the enemies of this country (a).

[*Commencement of information as ante, 6.*] That on, &c. and before, there was and yet is an open and public war between our present sovereign lord the king and the French king, and also on the same day and year last mentioned there was and yet is an open and public war between our present sovereign lord the king and the king of Spain, and that on the same day and year, and before hostilities were carried on by our said sovereign lord the king against the States General of the United Provinces, that is to say, at the parish of Saint Mary-le Bow, in the ward of Cheap, in London aforesaid. And the said attorney-general of our said lord the king giveth the court here further to understand and be informed, that on, &c. last aforesaid, and before, there was and yet is a strict and firm friendship between our said present sovereign lord the king and her imperial majesty the empress of all the Russias, and during all the time aforesaid, there was and yet is a mutual intercourse and commerce between the subjects of our said present sovereign lord the king and the subjects of her said imperial majesty, in the exportation out of this kingdom to the dominions of her imperial majesty, of divers productions and manufactures, from the dominions of our said present sovereign lord the king of

(a) See precedent, 4 Wentw. 410, and the next precedent; for breaking safe conduct, see West, 195. As to offences

against the law of nations and ambassadors in general, see 4 Bl. Com. 66 to 71. Com. Dig. Ambassador.

Great Britain, and in the importation into this kingdom from the dominions of her said imperial majesty, divers productions and manufactures of the dominions of her said imperial majesty, for the use of the navy of our said lord the present king, and the ships of the subjects of our said present sovereign lord the king of Great Britain, and for other beneficial purposes : and that his excellency John Simolin, a subject of her said imperial majesty, before the printing and publishing the false, scandalous, infamous, and defamatory libel hereinafter next mentioned, had been sent from her said imperial majesty, in quality of her said imperial majesty's envoy extraordinary and minister plenipotentiary to our said present sovereign lord the king, to preserve and cultivate the friendship between our said sovereign lord the king, and her said imperial majesty, and to maintain the mutual intercourse and commerce between their subjects ; and that his excellency John Simolin, before the printing and publishing of the said false, scandalous, infamous, and defamatory libel hereinafter next mentioned, to wit, on, &c. was received by our said present sovereign lord the king, in quality of envoy extraordinary and minister plenipotentiary from her said imperial majesty to our said present sovereign lord the king, and from thence, until, and at the time of printing and publishing of the false, scandalous, infamous, and defamatory libel hereinafter next mentioned, resided, and still doth reside within this kingdom, with the consent of our said present sovereign lord the king, in quality of envoy extraordinary and minister plenipotentiary from her said imperial majesty to our said present sovereign lord the king, and was the only public minister during that time from her said imperial majesty to our said present sovereign lord the king resident within this kingdom, that is to say, at, &c. ; and the said attorney-general of our said lord the king, for our said lord the king further giveth the court here further to understand and be informed, that before the printing and publishing of the false, scandalous, infamous, and defamatory libel hereinafter next mentioned, that is to say, on, &c. and in the morning of Thursday, &c. in the same year, certain false, &c. reports were propagated, of intelligence having been given by his said excellency, J. S. during his residence in this kingdom as envoy extraordinary and minister plenipotentiary as aforesaid, to the said enemies of our lord the king, to enable them the better to conduct themselves in the said wars in which they were then engaged with our said lord the king, that is to say, at, &c. ; and the said attorney-ge-

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neral of our said present sovereign lord the king, for our said lord the king, giveth the court here further to understand and be informed, that John Bew, late of London, printer, being a person of a wicked and malicious disposition, and disregarding the law of nations and the rights and privileges of public ministers of foreign princes and states, and unlawfully and wickedly and maliciously devising and designing to traduce and vilify the reputation, integrity, and honor of his said excellency J. S. and unjustly and wickedly to insinuate and cause it to be believed that his said excellency had disregarded his character and dignity of a public minister from her said imperial majesty to our said present sovereign lord the king, and had dishonorably and infamously prostituted the same to serve the enemies of our said present sovereign lord the king, and to confirm, as far as in him the said J. B. lay, the said false, &c. reports propagated concerning his said excellency as aforesaid, and unjustly and wickedly to excite and create unwarrantable and injurious jealousies and suspicions of the conduct, integrity, and honor of his said excellency, and to expose him to contempt, and most maliciously and wickedly, as far as in the said J. B. lay, to interrupt and destroy the harmony and friendship which happily subsists between our said present sovereign lord the king and her said imperial majesty, and the said intercourse and commerce between the subjects of our said present sovereign lord the king, and the subjects of her said imperial majesty, unlawfully, wickedly, and maliciously during the time of the said wars, to wit, on, &c. with force and arms, at, &c. to wit, in the parish of, &c. did print and publish, and caused and procured to be printed and published, a certain false, &c. libel, intituled, the General Evening Post, (London) from Thursday, January 18, to Saturday, January 20, 1781, No. 7317, in which said libel of and concerning his said excellency J. S. and also concerning him in his character of such public minister as aforesaid, from her said imperial majesty to our said present sovereign lord the king, respecting the said false, &c. reports propagated concerning his said excellency as aforesaid, are contained, among other things, divers false, &c. matter, that is to say, in one part thereof, according to the tenor following, to wit, [*here set out libel*] to the great scandal, injury, and disgrace of his said excellency J. S., to the great reproach and ignominy of his said excellency in his character of envoy extraordinary and minister plenipotentiary as aforesaid, in violation of the law of nations, and of the protection and security

which public ministers of foreign princes and states ought and are entitled to enjoy in this kingdom, in contempt of our said present sovereign lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said present sovereign lord the king, his crown, and dignity. *That* on, &c. and for divers months there was and yet is an open and public war between our said present sovereign lord the king and the French king, and that on the same day and year last mentioned, and before, there was and yet is a public and open war between our said present sovereign lord the king and the king of Spain, that is to say, at L. aforesaid, in the parish and ward aforesaid; and the said attorney-general of our said lord the king, for our said lord the king, giveth the court here further to understand and be informed, that his said excellency J. S. at the time of publishing the false, &c. libel hereinafter next mentioned, and before, was and yet is a public minister, that is to say, envoy extraordinary and minister plenipotentiary from her imperial majesty the empress of all the Russias to our said present sovereign lord the king, accepted and received by our said lord the king as such public minister, and during that time hath resided, and still resides, in this kingdom, in quality of such public minister, with the consent of our said present sovereign lord the king, that is to say, at, &c. aforesaid; and the said attorney-general of our said lord the king, for our said lord the king, giveth the court here to understand and be informed, that before the publication of the false, &c. libel hereinafter mentioned, certain false, &c. reports had been propagated concerning his said excellency, and highly injurious to his character and honor, to wit, at L. aforesaid, in, &c.; and the said attorney-general of our said lord the king, for our said lord the king, giveth the court here further to understand and be informed, that the said J. B. being a person of a wicked and malicious disposition, and disregarding the law of nations, and the rights and privileges of public ministers of foreign princes and states, and unlawfully, wickedly, and maliciously intending, devising, and contriving to traduce and vilify the reputation, character, and honor of his said excellency J. S., and unjustly and wickedly to insinuate and cause it to be believed that his said excellency had disgraced the character of a public minister from her imperial majesty to our present sovereign lord the king, and had dishonorably and infamously prostituted the same to serve the enemies of our said lord the king, and to excite

Second count.

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Third count.

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and create unwarrantable and injurious jealousies and suspicions of the conduct, integrity, and honor of his said excellency, and to expose him to contempt, unlawfully, wickedly, and maliciously during the time of the said war between our said present sovereign lord the king, and the French king, to wit, on, &c. in the twenty-first year, &c. with force and arms, at, &c. to wit, at, &c. did publish, and cause and procure to be published, of and concerning his said excellency J. S. and concerning him in his character of such public minister as aforesaid, and also respecting the said reports so propagated as last mentioned, a certain other false, &c. libel, according to the tenor following, to wit, &c. [*here state libel,*] to the great injury, scandal, and disgrace of his said excellency J. S. &c. &c. &c. (as before.) *That* on, &c. and before, there was and yet is an open and public war between, &c. and that his said excellency J. S. at the time of publishing, &c. libel hereinafter next mentioned, and before, was and yet is a public minister (that is to say), plenipotentiary of her imperial majesty the empress of all the Russias, to our present sovereign lord the king, accepted and received by our said lord the king as such public minister, and during that time hath resided, and still resides, in this kingdom in quality of such public minister, that is to say, at, &c.; and the said attorney-general of, &c. for, &c. giveth, &c. that the said J. B. being a person of a wicked, &c. and disregarding the law of nations and the rights and privileges of public ministers and foreign princes and states, and unlawfully, &c. intending, &c. to traduce and vilify the reputation, integrity, and character of his said excellency, J. S., and unjustly and wickedly to insinuate and cause it to be believed that his said excellency had disgraced the character of a public minister from her imperial majesty to our said present sovereign lord the king, and had dishonorably and infamously prostituted the same, to serve the enemies of this kingdom, and to excite and create unwarrantable and injurious jealousies and suspicions of the conduct, integrity, and honor of his said excellency, and to expose him to contempt, unlawfully, &c. during the time of the said war between our said present, &c. and the French king, to wit, on, &c. in the twenty-first year, &c. with force and arms, at, &c. in, &c. did publish, and cause and procure to be published, of and concerning his said excellency, J. S. being such public minister as last aforesaid, a certain other false, &c. libel, according to the tenor following, that is to say [*set forth libel,*] to the great injury, scandal, and

disgrace of his said excellency, J. S. in violation of the law of nations, and of the protection and security which public ministers of foreign princes and states ought and are entitled to enjoy in this kingdom, in contempt of our said present sovereign lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity, whereupon, &c. [*Usual conclusion of an information by the attorney-general, as ante, 6.*]

[*Commencement as ante, 6.*] That A. B. late of, &c. C. D. late of, &c. together with several other riotous and ill-disposed persons, to the said attorney-general of our said lord the now king as yet unknown, on, &c. at, &c. with force and arms, &c. unlawfully, riotously, and routously assembled, collected, and conjoined to disturb the peace of our said lord the now king, and being then and there so assembled and collected, with force and arms, &c. riotously, routously, and unlawfully broke down the doors of the dwelling-house of the most noble L. J. T. count of P. in Piedmont, in parts beyond the sea, then being the envoy extraordinary sent to our said lord Charles the Second, by the grace of God, &c. from his royal highness the Duke of Savoy, and through the said door so broke open with force and arms, &c. unlawfully, riotously, and routously broke and entered the said dwelling-house, and the chattels and household goods of the said L. J. T. count of P. so being such envoy extraordinary as aforesaid, then and there found, with force and arms, &c. riotously, routously, and unlawfully took and carried away; and the said L. J. T. count of P. being such envoy extraordinary as aforesaid, for a long space of time, to wit, from, &c. aforesaid, until, &c. with force and arms, &c. unlawfully, riotously, and routously kept out from the possession of his aforesaid dwelling-house, and other wrongs to him did, to the evil example, &c. and against the peace, &c. [*Conclusion as ante, 6.*]

Information for a riot and breaking open the house of the ambassador from the Duke of Savoy, and taking from thence divers goods (a).

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(a) Trem. P. C. 186. 2 Show. 149.

CHAPTER V.

INDICTMENTS, &c. FOR OFFENCES AGAINST THE KING, GOVERNMENT, AND PUBLIC OFFICERS.

Preliminary Observations on the Offence of High Treason, Indictment, Defence, Evidence, Judgment, and Punish- ment (a).

I. OFFENCE OF HIGH TREASON.

I. AS TO THE OFFENCE OF HIGH TREASON, see 1 East P. C. 37 to 138. 4 Bla. Com. 74 to 93. Com. Dig. Justices, K. It is principally defined and regulated by the statute 25 Edw. 3. st. 5. c. 2. and 36 Geo. 3. c. 7. The 25 Edw. 3. st. 5. c. 2. declares it to be high treason "when a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir, or if a man do violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir, or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be proveably (*i. e.* upon sufficient proof) attainted of open deed by the people of their condition. And if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into this realm, counterfeit to the money of England, as the money called Lushburgh, or other like to the said money of England, knowing the money to be false, to merchandize, or make payment in deceit of our lord the king, and his people; and if a man slay the chancellor, treasurer, or the king's justices of the one bench, or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places during their offices." The stat. 36 Geo. 3. c. 7. enacts, that "If any person, after the passing of this act, during the natural life of the king, and until the end of the

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(a) As the points upon these subjects are voluminous, it has been considered preferable to

state them as notes, preceding the forms of Indictment.

next session of parliament, after a demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm leading to death or destruction, maim, or wounding, imprisonment or restraint of the person of the king, his heirs or successors, or to deprive or depose him or them from the style, honor, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries, or to levy war against his majesty, his heirs or successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both or either houses of parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other his majesty's dominions or countries under the obeisance of his majesty, his heirs and successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, by the oaths of two lawful and credible witnesses upon trial or otherwise convicted or attainted by due course of law, then every such offender shall be deemed, declared, and adjudged to be a traitor.

The following is the analysis of the distinct heads of offence.

1 East P. C. 57.

1. The compassing or imagining of the death of the king.
2. Compassing or imagining the death of the queen, or the eldest son and heir of the king and queen.
3. Violating the king's wife, or eldest daughter unmarried, or the wife of his eldest son and heir.
4. Levying war against the king in his realm.
5. Adhering to the king's enemies.
6. Counterfeiting the king's seals.
7. Killing his officers.
8. Concerning the coin.
9. Concerning papists and the king's supremacy.
10. Concerning the succession to the crown.
11. Seducing, or attempting to seduce, others from their allegiance.
12. Desertion from the king's forces.

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These several heads of offence are fully commented upon in 1 East P. C. 58 to 93. Com. Dig. Justices, K. And the following precedents of indictments will be found arranged nearly in the same order. The treason must be established by proof of some overt act or *apertum factum*, which must be laid in the indictment. 3 Inst. 5. 2 East. R. 11. 6 East. R. 426.

The acts to establish that the defendant did "*compass or imagine the death of the king*," as high treason, prohibited by 25 Edw. 3. st. 5. c. 2. are,

1st. Actual killing. 1 East P. C. 58. Kel. 8.

2dly. Preparing means of death. 1 East P. C. 58. 1 And. 104.

3dly. Consultation. 1 East P. C. 58. Fost. 195. Kel. 15.

4thly. Depositing or taking possession of king or government, or resolving to do it. 1 East P. C. 59, 60. 4 St. Tr. 661. 562. 2 Salk. 631.

5thly. Overawing and subverting parliament. 1 East P. C. 60.

6thly. Levying and consulting to levy war. 1 East P. C. 62. Fost. 195. 210, 11.

7thly. By constructive levying of war. 1 East P. C. 63.

The acts to establish that the defendant did "*levy war against the king in his realm*," as high treason, prohibited by 25 Edw. 3. st. 5. c. 2. are,

1st. All insurrections against the person of the king, whether they be to dethrone, imprison, or force him to alter his measures of government, or to remove evil counsellors from about him. 1 East P. C. 66.

2dly. Holding a fort, &c. against the king. 1 East P. C. 68.

3dly. Joining with rebels in any act of rebellion. 1 East P. C. 70.

4thly. Giving assistance or intelligence to rebels. 1 East P. C. 72.

5thly. Constructive levying war by insurrection, to reform supposed national grievance, &c. 1 East P. C. 72. 1 Hale, 119. 121. Fost. 197. 211. 4 St. Tr. 229. 332. 559. 10 Mod. 321.

The acts to establish that the defendant was "*adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere*," as high treason, prohibited by

25 Edw. 3. st. 5. c. 2. are not limited or defined, but are principally,

- 1st. Sending information to enemy of the state of forces, &c.
1 East P. C. 78.
- 2dly. Making war on king's allies. 1 East P. C. 79.
- 3dly. Sending forces to assist enemy. 1 East P. C. 78.
- 4thly. Any other assistance.

The acts to constitute high treason, under 36 Geo. 3. c. 7. are "within the realm, or without compassing, imagining, inventing, devising, or intending."

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1st. "Death or destruction, or any bodily harm tending to death or destruction, maim, or wounding, imprisonment or restraint of the person of the king, his heirs or successors," or

2dly. "To deprive or depose him or them from the style, honor, or kingly name of the imperial crown of this realm or of any other of his majesty's dominions or countries," or

3dly. "To levy war against his majesty, his heirs or successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels," see 1 East P. C. 63. 66. 67. or

4thly. "To levy such war, in order to put any force or constraint upon, or to intimidate or overawe both, or either houses of parliament," or

5thly. "To move or stir any foreigner or stranger with force to invade this realm, or any other of his majesty's dominions or countries, and in the obeisance of his majesty, his heirs and successors," 1 East P. C. 63—78.

"Such compassings, imaginations, inventions, devices, or intentions, or any of them being expressed, uttered, or declared by publishing any printing or writing, or by any overt act or deed."

II. AS TO THE INDICTMENT. The VENUE must be laid in a county in which an overt act of treason can be proved, but after proof of an overt act in one county, evidence may be given of any other overt acts of the same species of treason in other counties, 1 East P. C. 125. 4 East Rep. 171. 4 St. Tr. 410. 455. Fost. 9. 1 Burr. 647, ante, 1 vol. and it is sufficient to lay the overt act at any place in the county, though it be proved to have been in another place, 1 East P. C. 125. In stating an overt act in sending letters to enemy abroad, it is

II. THE
INDICTMENT.

better to state that the letters were sent from the place where the venue is laid, to be delivered in parts beyond the seas, 1 East P. C. 124. Intercepted letters are received as overt acts of treason in the county in which they were written, 2 Campb. 506. For treason out of the realm, the commission and indictment allege that the offence was committed without the realm. Platt's case, Leach. C. L. 4th edit. 157.

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Every indictment for high treason must lay the offence to have been committed *traitorously*, 2 Ld. Raym. 870. Comb. 259. 1 East P. C. 115. and should conclude against the duty of the defendant's allegiance. Comb. 259. 1 Ld. Raym. 1, 2. Salk. 630. 1 East P. C. 115. A charge of doing any thing seditiously, does not amount to a charge of treason, 1 East P. C. 115. Where the traitor is a natural-born subject, it is usual to lay the offence to have been done against his "*natural*" allegiance, but that is not necessary; for, in the general word "*allegiance*," is comprised every species of it, and the addition of the word "*natural*" is improper, where the defendant is a foreigner. Yet, if that fact appeared upon the face of the indictment, the word "*natural*" might be rejected as repugnant, and surplusage. 1 East P. C. 115. Holt, 686. It is sufficient, however, if the species of treason, such as compassing the king's death, be laid to be done "*traitorously*," there is no necessity to charge every separate overt act, relating thereto, to be so done. And it is sufficient, in stating such several overt acts, to couple them together by an "*and*" without repeating "*that the jury further present*," &c. or the like, but that form is the proper one in laying distinct species of treason, 1 East P. C. 116. See Holt, 686, 7. 4 Harg. St. Tr. 702.

In every indictment for high treason, upon the stat. 25 Ed. 3. for compassing the death of the king, or of such of his family as are therein named, or for levying war or adhering to his enemies, the particular species of treason must be charged in the very terms of the statute, as, that the defendant "*did traitorously compass and imagine*." And then some overt act must be laid as the means made use of to effectuate the traitorous purpose, 1 East P. C. 58. 116. 2 East, 11. 6 East, 426. 1 Hale, 150. Kel. 8. For though the words of the statute "*and thereof be proveably*, (*i. e.* on sufficient proof,) *attainted by open deed*," &c. come immediately after the clause of adhering to the king's enemies, yet they refer to all the treasons before

mentioned. The overt acts so laid, are, in truth, the charge, to which the prisoner must apply his defence. And, therefore, it is in no case sufficient, merely to allege, that the prisoner "compassed the king's death," &c. or, "that he levied war against him," or "adhered to his enemies," for upon a charge so general and indefinite, he cannot know what acts he is to defend. The particular acts of compassing and adherence must be set forth, and it must be alleged, that he assembled with a multitude, armed and arrayed in a warlike manner, and levied war, 1 East P. C. 58, 116. 2 East, 11. 6 East, 426. 1 Hale, 150. Kel. 8. The indictment on 25 Ed. 3. st. 5. c. 2. for "*levying war against the king in his realm*," must be expressly so laid, 1 East P. C. 66. though we have seen that there may be five overt acts afterwards laid. The indictment generally charges that the defendants were armed, and arrayed in a warlike manner, and where the case admits of it, with swords, guns, drums, colours, &c. (see precedent, post, and Cro. C. A. 290. Trem. P. C. 3. Fost. ch. 5. but this does not seem necessary, 1 East P. C. 67. 116.) Levying war, being an overt act of itself, no other overt act need be alleged, if it be expressly shown that what was done by the defendant, was in a warlike manner; but merely to allege that the defendant levied war, would not suffice on this statute, 1 East P. C. 116, 17. Trem. P. C. 3. In an indictment on 25 Ed. 3. st. 5. c. 2. for "*adhering to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere*," this must be laid as the offence, though we have seen that there may be several overt acts establishing such offence. It is necessary to aver, that the persons adhered to were the king's enemies, as well as that the defendant adhered to them, but it is not necessary to allege expressly that such adherence was against the king, that being apparent, nor is it necessary that the parties should come to an action, but the special matter of adhering must be set forth, 1 East P. C. 78.

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One species of treason may be laid and proved as an overt act of another, 1 East P. C. 62. 117. and therefore it is usual to insert in the indictment one count, for "compassing the king's death," shewing the overt acts, and then to add a second "for adhering to the king's enemies," and repeating the same overt acts, see precedents, post, 73 and 78. But it seems that no overt act can be given in evidence under any branch of

treason, unless it be expressly laid as an overt act of such treason, although it be laid as an overt act of some other treason in the same indictment, 1 East P. C. 117.

But though some overt acts must be laid and proved in the instances before-mentioned, yet it is not necessary that the whole detail of the evidence should be set forth. The common law never required this exactness, and the statute 7 Wm. 3. c. 3. s. 1. does not make it necessary to charge particular facts where it was not necessary before. It is sufficient that the charge be stated with reasonable certainty, so that the prisoner may be apprised of the nature of it. Thus, the laying that A. and B. met and proposed the means how to effect the king's death is sufficient, without alleging the particular means upon which they agreed, which is matter of evidence. So if the overt act consist of words or a letter, the contents of it need not be set forth; it is sufficient to state the substance and intent of them, 4 East, 171. 6 East, 426. 1 East P. C. 121. 124. 2 Stark. 137. 6 St. Tr. 58. 73. 4 St. Tr. 411. The statute of William directs that "no evidence shall be admitted or given of any overt act that is not expressly laid in the indictment, against any person or persons whatsoever." *Id. ibid.* The true sense of this clause is, that no overt act amounting to a distinct independent charge, though falling under the same head of treason shall be admitted in evidence, unless it be expressly laid in the indictment, but an overt act may be given in evidence, though it be not expressly laid, or not well laid in the indictment, if it amount to direct proof of any overt act which is well laid, 1 East P. C. 121.

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On the other hand, if the overt act offered in evidence, and not laid in the indictment, be no direct proof of any of the overt acts charged, but merely go to strengthen the evidence or suspicion of some of those overt acts by a collateral circumstance, such evidence cannot be admitted, notwithstanding the opinion of Lord Hale to the contrary. As in the case of Captain Vaughan, who was indicted for adhering to the king's enemies on the high seas; the overt act laid was, his cruising upon the king's subjects in a vessel called the *Loyal Clencarty*, and the counsel for the crown offered to give in evidence, that he had some time before cut away the custom-house barge, and had gone cruising in that vessel, but as that was no proof of his cruising in the *Loyal Clencarty*, the court rejected the evidence, 1 East P. C. 123.

If but one of several overt acts be well laid and proved that is sufficient. And if it be laid with circumstances not necessary to constitute the act of high treason, they need not be proved, but may be rejected as surplusage. As in the case of treason in levying war, if the overt act be an arraying in hostile manner, and thereby killing divers of the king's subjects, if the arraying in an hostile manner be proved that is sufficient, without proof of the rest. Or if it be as in Lowick's case, that A. and B. met and purposed the king's death, and the particular measure by which they purposed to effect it, be not well laid, the latter will not vitiate the rest, 1 East P. C. 125.

Neither is the time or place laid in an overt act charged in an indictment, more necessary to be strictly proved in this than in any other case, provided a time be laid before the finding of the bill, and a place be laid within the county. 1 East P. C. 125. and though it is usual and proper in some cases, to charge the overt acts at divers days and times, yet, under an indictment laying them all on one day, evidence may be given of any overt acts before the finding of the bill. Fost. 8 and 9. See Kel. 8. Fost. 194. 1 Hale, 122.

An indictment against a receiver of a traitor after the fact, must charge him specially with the receipt, and not generally that he did the thing, which is otherwise in case of one who is a procurer, counsellor, or assenter. 1 East P. C. 127. Fost. 345.

III. AS TO THE DEFENCE. The defendant is, by 7 W. 3. c. 3. and 7 Ann. c. 21. to have a copy of the indictment, including the caption, Fost. 229. 1 East P. C. 113. ten days before the trial, with a list of the witnesses (a) on the part of the prosecution and of the jury; he is also to have two counsel assigned him, by whom he may make full defence, 1 East P. C. 111 to 115. 4 Bla. Com. 351. 356. As to the mode of appointing counsel and the right to reply, 1 Burr. 643 to 646. In case of high treason and misprision of treason, where the

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DEFENCE.

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(a) Where a witness was in the list described as *lately* abiding at a specified place, and upon examination of the witness upon the *voir dire*, it appeared he had a later and different place of residence, the description was held insufficient, 2 Stark. 116.

overt act alleged in the indictment is the assassination or killing of the king, or any direct attempt against his life, or to do him bodily harm, the defendant is to be indicted, arraigned, tried, and attainted in the same manner, and upon the like evidence as in case of murder, but the judgment and execution is to be the same as in other cases of high treason, 39 & 40 Geo. 3. c. 93. The defendant at and during trial is not to be in irons, Kel. 10.

IV. THE EVIDENCE.

IV. AS TO THE EVIDENCE. In high treason against the king or government, there must generally be two witnesses as well to find the bill as on the trial, unless the defendant confess, 1 Ed. 6. c. 12. s. 22. 7 Wm. 3. c. 3. s. 2. 1 East, P. C. 128, and 61. But one will suffice on indictment for direct attempt at the life of the king, 1 East, P. C. 129; and in other cases, it is sufficient to have one witness to prove one overt act, and another witness to prove another overt act of the same kind of treason, Kel. 8, 9, and as to collateral facts, one witness suffices, 1 East, P. C. 130; and on an indictment for compassing the death of the king, and that defendant in pursuance thereof, wrote divers letters to enemies, or held divers consultations upon that subject; evidence may be given of the prisoner's having written any treasonable letter, or attended any meeting held for treasonable purposes, 1 Campb. 400: and intercepted letters are received in evidence as overt acts of treason in the county where they were written, 2 Campb. 507. In an indictment against one conspirator in treason, after proof of the conspiracy, evidence of an overt act by one of the conspirators, will affect the defendant, 6 T. R. 527. And see further, as to evidence, 1 Phillips on Evidence, 109. 6th edition.

V. THE JUDGMENT AND PUNISHMENT.

V. AS TO THE JUDGMENT AND PUNISHMENT. When women are convicted of treason, the judgment is, that they be hanged by the neck until they be dead. 30 Geo. 3. c. 48. The judgment against a man is, by 54 Geo. 3. c. 146, to be, that defendant should be drawn on a hurdle to the place of execution, and be there hanged by the neck until he be dead; and that afterwards his head shall be severed from his body, and his body divided into four quarters, shall be disposed of as the king shall think fit; with power to the king, by special warrant, in part to alter the punishment. A month's time has been allowed between sentence and execution, 1 Burr. 650, 651.

PRECEDENTS OF INDICTMENTS, &c. FOR TREASON.

[*Commencement of indictment as ante*, 2.] That on, &c. and long before and continually from thence hitherto, an open and public war was and yet is prosecuted and carried on between our said lord the king, and the persons exercising the powers of government in France, that is to say, at Old Ford, in the county of Middlesex, and that William Stone, late of, &c. a subject of our said lord the king of his kingdom of Great Britain, well knowing the premises, but not regarding the duty of his allegiance, nor having the fear of God in his heart, and being moved and seduced by the instigation of the devil (*b*), as a false traitor against our said lord the king, and wholly withdrawing the allegiance, fidelity, and obedience which every true and faithful subject of our said lord the king of right ought to bear towards our said lord the king, and contriving, and with all his strength intending * the peace and common tranquillity of this kingdom to disquiet, molest, disturb, and to depose our said lord the king from the royal state, title, power, and government of this kingdom, and to bring and put our said lord the king to death, heretofore, to wit, on, &c. and on divers other days, as well before as after that day, at, &c. aforesaid, maliciously and traitorously, with force and arms, did compass, imagine, and intend to depose our said lord the king from the *royal state, title, power, and government* (*c*) of this kingdom, and to bring and put our said lord the king to death. And to fulfil, perfect, and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on, &c. aforesaid, and on divers other days and times as well before as after that day, at, &c. aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent, and agree with one John Hurford Stone, one William Jackson, and divers other false

For treason,
First count, compassing the death of the king, and to depose him, on 25 Ed. 3. st. 5. c. 2. (a).

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First overt act, defendant agreeing with W. J. to aid and assist enemies in hostile invasion.

(a) See precedent and law, 6 Wentw. 357. 6 T. R. 527. 4 State Trials, 207. Foster, C. L. 5. Trem. P. C. 2, 3, 5, 158, and Co. Ent. 482. See also the precedent in *Rex v. Watson*, 2 Stark. 116, disclos-

ing a great variety of overt acts.

• (*b*) This is not necessary, see vol. i.

(c) See the words of the statute 25 Edw. 3. st. 5. s. 2.

Second overt act, conspiracy with others to levy and make insurrection and rebellion, and incite enemies to invade this kingdom with ships and armed men.

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traitors, whose names are to the said jurors unknown, to aid and assist, and to seduce, persuade, and procure divers subjects of our said lord the king to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in an hostile invasion of the dominions of our said lord the king, and in the prosecution of the said war against our said lord the king. *And* further to fulfil, perfect, and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war,* to wit, on, &c. aforesaid, and on divers other days, as well before as after that day, at, &c. aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent, and agree with the said John Hurford Stone, William Jackson, and divers other false traitors whose names are to the said jurors unknown, *to raise, levy, and make insurrection, rebellion, and war within this kingdom* against our said lord the king, and to invite, persuade, and procure the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, to invade this kingdom with ships and armed men, and to prosecute and carry on the said war against our said lord the king within this kingdom.

Third overt act, assisting a third person who had come to England for traitorous purposes.

And further, &c. [*same introduction as ante, 68, and then proceed as follows.*] He the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on, &c. and on divers other days as well before as after that day, at, &c. aforesaid, well knowing the said William Jackson traitorously to have come to and landed in this kingdom, for the traitorous purpose of procuring and obtaining intelligence and information whether the subjects of our said lord the king were or were not well affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in case an hostile invasion of this kingdom should be made by them for the prosecution of the said war against our said lord the king. and of sending and causing to be sent such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the

king, in their conduct and prosecution of the said war against our said lord the king, did, with force and arms, maliciously and traitorously receive and treat with the said William Jackson, at, &c. aforesaid, for the aid, assistance, and direction of the said William Jackson, in the prosecution, performance, and execution of his traitorous purpose aforesaid, and did then and there maliciously and traitorously treat, consult, and converse with, and did then and there maliciously and traitorously aid, comfort, abet, and assist the said William Jackson in, about, and concerning the prosecution, performance, and execution of his the said William Jackson's traitorous purpose aforesaid.

[*Commencement of statement of overt act as ante, 2.*] Did conspire, consult, consent, and agree with the said John Hurford Stone, William Jackson, and divers other false traitors whose names are to the said jurors unknown, to collect and obtain, and cause to be collected and obtained, information and intelligence within this kingdom and the kingdom of Ireland, whether any and what part of the subjects of our said lord the king were disposed to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in an hostile invasion of any and what part of this kingdom or of the kingdom of Ireland, for the prosecution of the said war against our said lord the king, and to communicate, notify, and reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king, in their conduct and prosecution of the said war against our said lord the king.

Fourth overt act, conspiring to collect information here and in Ireland, as to the dispositions of subjects to assist invading enemy with intent to communicate same to enemy.

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[*Commencement of statement of overt act as ante, 68.*] Did inquire, and cause to be inquired, of divers persons in this kingdom, and did collect and obtain, and cause to be collected and obtained, from such persons information and intelligence, whether the subjects of our said lord the king were or were not well affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in case an hostile invasion should be by them made into this kingdom for the prosecution of the said war against our said lord

Fifth overt act, collecting information as to disaffected persons, in order to send information to enemy.

the king, with intent to communicate, notify, and reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king, in their conduct and prosecution of the said war against our said lord the king.

Sixth overt act, obtaining and keeping like information, with intent to reveal to enemy.

[Commencement of statement of overt act as ante, 68.] Did obtain and in his custody and possession did keep divers letters, notes, memorandums, and instructions in writing, containing information and intelligence how the subjects of our said lord the king were affected to our said lord the king and his government, and in what manner the said subjects were likely to act in case an hostile invasion of this kingdom should be made by the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the prosecution of the said war against our said lord the king, with intent to communicate, notify, reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king as aforesaid, in their conduct and prosecution of the said war against our said lord the king.

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Seventh overt act, sending information to enemy how British subjects were affected towards the king.

[Commencement of statement of overt act as ante, 68.] Did send, and cause and procure to be sent, from this kingdom, to be delivered in foreign parts beyond the seas, divers other letters, notes, memorandums, and intelligence in writing, containing information and instruction how the subjects of our said lord the king were affected to our said lord the king and his government, and in what manner the said subjects were likely to act in case an hostile invasion of this kingdom should be made by the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the prosecution of the said war against our said lord the king, with intent to communicate, notify, and reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our

said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king.

[*Commencement of statement of overt act as ante, 68.*] Did with the said William Jackson and divers other false traitors, whose names are to the said jurors unknown, conspire, consult, consent, and agree to raise, levy, and make insurrection, rebellion, and war against our said lord the king within his kingdom of Ireland, and to cause, procure, and incite the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, to invade the kingdom of Ireland with ships and armed men, and to carry on the said war against our said lord the king within the said kingdom of Ireland.

Eighth overt act, conspiring to raise rebellion and war in Ireland.

[*Commencement of statement of overt act, as ante, 68.*] He the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on, &c. and on divers other days as well before as after that day, at, &c. aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent, and agree to, and with the said William Jackson and divers other false traitors, whose names are to the said jurors unknown, that he the said William Jackson should go to, and land in the kingdom of Ireland, for the traitorous purpose of procuring and obtaining intelligence and information whether the subjects of our said lord the king, of his kingdom of Ireland, were or were not well affected to our said lord the king and his government, and were or were not likely to join with, and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in case an hostile invasion of the said kingdom of Ireland should be made by them for the prosecution of the said war against our said lord the king, and of sending, and causing to be sent, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king, and did then and there maliciously and traitorously aid and assist the said William Jackson in going to and landing in the said

Ninth overt act, conspiring that W. J. should go to Ireland to raise rebellion and war there.

kingdom of Ireland, for the prosecution, performance, and execution of the traitorous purpose last mentioned, and which said William Jackson, in pursuance of the said last-mentioned conspiracy, consultation, consent, and agreement, heretofore and during the said war, to wit, on, &c. did go to and land in the kingdom of Ireland, and did stay and continue there for a long time, to wit, for the space of one month, for the prosecution, performance, and execution of the traitorous purpose last-mentioned.

Tenth overt act, corresponding with W. J. in Ireland for same traitorous purposes.

[*Commencement of statement of overt act as ante, 68.*]—He the said William Stone, as such false traitor as aforesaid, after the said William Jackson had gone to, and landed in the said kingdom of Ireland, for the traitorous purpose last-mentioned, and while the said William Jackson remained and continued in the said kingdom of Ireland for the traitorous purpose last-mentioned, and during the said war, to wit, on, &c. and on divers other days as well before as after that day, at, &c. aforesaid, with force and arms maliciously and traitorously did correspond with, advise, counsel, aid, abet, and assist the said William Jackson in and about the prosecution, performance, and execution of the traitorous purpose last-mentioned.

Eleventh overt act, supplying W. J. with money for same traitorous purpose.

[*Commencement of statement of overt act as ante, 68.*]—Did furnish and supply, and cause to be furnished and supplied, and aid and assist in furnishing and supplying the said William Jackson with divers sums of money, bills of exchange, and notes for payment of money, thereby to enable the said William Jackson to fulfil, perform, and execute his, the said William Jackson's traitorous purposes before mentioned, in contempt of our said lord the king and his laws, to the evil example of all others, contrary to the duty of the allegiance of him the said William Stone, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

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Second count, for traitorously adhering to, aiding and comforting the king's enemies, with the same overt acts as in first count (a).

And the jurors aforesaid, upon their oath aforesaid, do further present, that on, &c. aforesaid, [*same as the first count to the words "with all his strength intending," at the asterisk,*

(a) As to who are the king's enemies within the act, see Fost. 219. 1 Hale, 162. 167. 3 Inst. 11. 2 Salk. 634.

and then proceed as follows,] to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king, in the prosecution of the said war against our said lord the king, heretofore and during the said war, to wit, on, &c. aforesaid, and on divers other days as well before as after that day, with force and arms, at, &c. aforesaid, maliciously and traitorously was adhering to, and aiding and comforting the said persons exercising the powers of government in France, then being enemies of our said lord the king as aforesaid, and that in the prosecution, performance, First overt act. and execution of his treason and traitorous *adhering aforesaid*, he the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on, &c. aforesaid, and on divers other days, as well before as after that day, at, &c. aforesaid, with force and arms maliciously and traitorously did, &c. *[same overt act as the first, in first count.]* And in further Second overt act. prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he the said William Stone, &c. *[Same overt acts stating the "adherence" here follow, precisely as in first count, and the second count concluded the same as the first.]*

That an open and public war, on, &c. and long before, and ever since, hitherto by land and sea, was and is yet carried on and prosecuted by Louis the French king against our most serene, illustrious, and excellent prince our said lord the king; and that one Francis Henry Delamotte, late of, &c. a subject of our said lord the king, of the kingdom of Great Britain, well knowing the premises, and not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, as a false traitor against our most serene, illustrious, and excellent prince George the Third, now king of Great Britain, &c. and contriving and with all his strength intending the peace and tranquillity of this kingdom of Great Britain to disquiet, molest, and disturb, and the government of our said present sovereign lord the king, of this kingdom of Great Britain, to change, subvert, and alter*, and our said lord the king from the royal state, title, honour, power, imperial crown, and government of this kingdom of Great Britain, to depose, and deprive our

For treason, first count, compassing the death of the king, and to depose him, on 25 Ed. 3. st. 5. c. 2. (a).

(a) See precedent, 4 Wentw. 1. 4 St. Tr. 207; and other precedents, ante, 64.

First overt act,
writing letters
apprising enemy
of the state of the
British forces,
&c. (a).

said lord the present king, to death and final destruction, to bring and to put the faithful subjects of our said lord, and the freemen of this kingdom to bring into the most miserable servitude and slavery under the French king, he the said defendant, on, &c. and on divers other days and times as well before as after that day, with force and arms, at, &c. falsely, wickedly, and traitorously, did compass, imagine, and intend our said present sovereign lord the king, of and from the royal state, crown, title, power, and government of this realm of Great Britain to depose and wholly deprive, and the same lord the king to kill and bring and put to death, and to fulfil and perfect and bring to effect his said most wicked and evil treasons, compassings, and imaginations aforesaid, he the said defendant, as such false traitor during the war aforesaid, falsely, wickedly, and traitorously, did compose and write, and cause to be composed and written, divers letters and instructions in writing, to shew and inform the said French king of the state, condition, and force of several of the ships of war of our said lord the king, and the number of the ships and forces of our said lord the king, then and there designed and prepared for the defence of this kingdom, and the enemies of the said realm to attack, repel, and resist, and how some of the ships of our said lord the king were manned, and for what time divers ships of war of our said lord the king were furnished with provisions, and of the stations of divers squadrons of ships of war of our said lord the king, employed in carrying on and prosecuting the said war, and the names of the commanders of such squadrons, and the number and force of the ships of war of which such squadrons consisted, and also the service on which divers other ships of war of our said lord the king were then employed in prosecuting and carrying on the said war, and also of the number and force of the ships of war of our said lord the king within certain ports of this kingdom, and of the state and condition of several of the said ships, and of the number of the land forces of our said lord the king in this realm and the dominions thereunto belonging, and of the times of the sailing of divers ships of war of our said lord the king, and the destination of the said ships, and the services on which such ships were employed, and of the times when other ships of war of our said lord the king were then expected to sail from this kingdom, and the voyages,

(a) As to the use in evidence of laying this overt act, see 1 Campb. 400.

cruizes, and services, upon which such ships were sailed, and also of the times when other ships of war of our said lord the king, employed in the prosecuting and carrying on the said war, were expected to arrive in this kingdom; and also of the times of the sailing of several ships and vessels belonging to divers subjects of our said lord the king from this realm, to the dominions of our said lord the king, and other places in parts beyond the seas, and also of the times when other ships and vessels belonging to divers other subjects of our said lord the king were expected to sail from this realm to the dominions of our said lord the king and other places, in parts beyond the seas; and also of the times when other ships of divers subjects of our said lord the king were expected to arrive in this kingdom from the dominions of our said lord the king, and other places beyond the seas. And that afterwards and during the said war, to wit, on, &c. at the parish aforesaid, in the county of Middlesex, he the said defendant, as such false traitor aforesaid, in prosecution of his said treason and treasonable purposes as aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain letter, to be sent to certain subjects of the said French king, in parts beyond the seas, and then and yet enemies of our said lord the king, in which said letter, the said defendant, amongst other things, wickedly, falsely, and traitorously, notified and discovered and revealed to the said enemies of our said lord the king, that the regiments of the army of our said lord the king were preparing to go to the West Indies, and also of the number of the land forces of our said lord the king to be sent to North America and Canada, and the stations of divers ships of war of our said lord the king, employed in prosecuting and carrying on the said war of our said lord the king against the enemy, the said Louis the French king, and afterwards and during the said war, viz. on, &c. aforesaid, at, &c. aforesaid, he the said defendant, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote a certain other letter, &c. [*Here was stated, as in second overt act, the effect of another letter.*] And afterwards and during the said war, to wit, on, &c. he the said defendant as such false traitor, wickedly and traitorously composed and wrote certain accounts or lists to certain subjects of the French king in parts beyond the seas, then and yet enemies of our said lord the king, in one of which accounts or lists the said

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Second overt act, writing a letter giving notice to enemy of a part of British forces being about to sail to the West Indies.

Third overt act, writing another letter.

Fourth overt act, composing and writing accounts and letters to French subjects, notifying the state of our forces.

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defendant falsely, wickedly, and traitorously notified, disclosed, and revealed to the enemies of our said lord the king, the number, force, and statement of a certain squadron of ships of war of our said lord the king, then employed in prosecuting and carrying on the said war, under the command of the said F. G. then being one of the admirals of our said lord the king, and in other of the said accounts or lists, the said defendant falsely, wickedly, and traitorously notified, discovered, and revealed to the enemies of our said lord the king, the number, names, and force, of certain ships of war of our said lord the king in this realm, and the state and condition, and destination of the same ships of war; and in another of the same accounts or lists, he, the said defendant, falsely, wickedly, and traitorously notified, disclosed, and revealed to the enemies of our said lord the king, the times of sailing, and destination of divers other ships of war of our said lord the king which had lately before that time sailed from this kingdom, and also the number, state, condition, and force of divers other ships of war of our said lord the king, then in the ports of this kingdom; and in another of the said accounts or lists, he, the said defendant, falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, the stations of divers ships and vessels of our said lord the king, then cruising against the enemies of our said lord the king. [*Then followed six other overt acts in writing other different letters and accounts, and then the indictment proceeded by stating the sending all the several letters and accounts abroad, as follows.*] And on, &c. last aforesaid, at, &c. aforesaid, in prosecution, and to promote his treason, imaginations, and compassings aforesaid, falsely, wickedly, and traitorously did send, and procure to be sent, all and singular the said several letters, instruments in writing, accounts or lists, and accounts or statements, hereinbefore mentioned to have been wrote and composed by him the said defendant from the parish aforesaid, in the county of Middlesex aforesaid, to be delivered in parts beyond the seas to several persons subjects of the French king, then and yet being enemies of our said lord the king; and that during the said war, to wit, on, &c. in, &c. aforesaid, at, &c. aforesaid, the said defendant, as such false traitor as aforesaid, and in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously did retain, hire, and procure, and cause to be retained, hired, and procured, one S. Radcliffe, then and there being master of a certain ship or

Eleventh overt act, sending all the said letters and accounts to be delivered in France.

Twelfth overt act, retaining one S. R. master of a ship, to carry to the French letters containing traitorous information.

vessel, to carry and convey in the said ship or vessel from this kingdom to the kingdom of France, and there to deliver to certain subjects of the said French king, then and yet enemies of our said lord the king, certain letters and instructions in writing, to inform the said French king and his subjects, then and yet enemies of our said lord the king, of the state, condition, destination, and stations of the naval and military forces of this kingdom, and other advice and intelligence to enable and assist the said French king and his subjects in the prosecution and carrying on of the said war against our said lord the king and his subjects. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on, &c. aforesaid, at, &c. aforesaid, he, the defendant, as such false traitor as aforesaid, in further prosecution of his said treason and treasonable purposes aforesaid, secretly, knowingly, unlawfully, and traitorously did obtain, procure, and get into his hands, custody, and possession, divers accounts in writing of the number and names of the ships of war of our said lord the king, then being at a place called Spithead, near Portsmouth, in the county of Southampton, and also in the harbour of Portsmouth aforesaid, and the state and condition of several of the said ships, and of the destination of some of the said ships, and for what time some of the said ships were victualled, and in what the said ships were employed, and the number and names of a squadron of the ships of war of our said lord the king, then shortly expected to sail from the kingdom, under the command of George Johnson, esquire, then being one of the officers in the navy of our said lord the king, and of the time for which the said squadron was victualled, and of certain regiments of the army of our said lord the king, then expected to be taken to sea in the said squadron, and also of the state and condition of divers ships of war of our said lord the king in parts beyond the seas, and also of certain ships of war of our said lord the king, employed in cruising against the enemies of this kingdom, and on the service of which the said ships were so employed, in order, and with intent to send and cause the same accounts to be sent, or the substance and contents thereof, to certain subjects of the said French king, then and yet enemies of our said lord the king; and for that purpose, he, the said defendant, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, falsely, wickedly, and traitorously, did carry and convey the said accounts to the dwelling-house of one Richard Otley, situate in the parish

Thirteenth overt act, traitorously obtaining written accounts of the number of ships of war, &c. with intent to send and sending the same to France.

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Fourteenth overt act, retaining H. L. to obtain information of state of our forces, in order to communicate same to French subjects.

aforesaid, in the said county of Middlesex. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on, &c. at, &c. he, the said defendant, as such false traitor as aforesaid, in further prosecution of his said treason and treasonable purposes aforesaid, unlawfully and traitorously did retain, hire, and employ one H. L. to obtain accounts and intelligence of the ships of war of our said lord the king, which should sail from Spithead aforesaid, and of the times of sailing, and of the names, force, and destination of such ships of war, and also of the arrival at Spithead aforesaid, of such ships of war of our said lord the king, as should be in the harbour of Portsmouth aforesaid, and the state, condition, and force of such ships, and of the times when such ships should sail, and the destination of such ships, and to communicate such accounts and intelligence to the said defendant, in order that the said defendant might send such accounts and intelligence to the subjects of the said French king, then and yet being enemies of our said present lord the king. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on, &c. at, &c. aforesaid, he, the said W. S., as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously, did retain and employ him the said H. L. to obtain information and intelligence of the sailing of a squadron of ships of war of our said lord the king, then shortly expected to sail from Spithead aforesaid, under the command of George Johnson, then being one of the officers of the navy of our said lord the king, and of the time when such squadron should sail, and of the number and force of the ships of such squadron, and immediately send, and cause to be sent, such information and intelligence, to certain subjects of the said French king, then and yet being enemies of our said lord the king, against the duty of the allegiance of him the said defendant, and against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided.

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Fifteenth overt act, retaining H. L. to obtain information as to a particular squadron, with like intent.

Common conclusion.

Second count, for traitorously adhering to, aiding and comforting the French king, and stating the same overt acts as in the first count.

And the said jurors for our said lord the king upon their oath aforesaid, do further present, that an open and public war, &c. [*same as commencement of the first count, ante, 73, to the asterisk, and then proceed as follows*], he the said defendant during the war aforesaid, on, &c. aforesaid, and on divers other days

and times as well before as after that day, with force and arms, at, &c. aforesaid, unlawfully and traitorously was *adhering to*(a), *aiding, and comforting* the said Louis the French king and his subjects, then being enemies of our said present sovereign lord the king, and in prosecution, performance, and execution of the said traitorous *adhering* of the said defendant to the said Louis the French king and his subjects, then being enemies of our said present sovereign lord the king; he the said defendant as such false traitor during the war aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, falsely, wickedly, and traitorously, did compose and cause to be composed and wrote, divers letters and instructions in writing [*same from the * in first count to the end, except that in stating each overt act, the words "adhering and" are to be inserted, so that each overt act is stated thus, "And that afterwards and during the said war, viz. on the said at, &c. aforesaid, he the said defendant as such false traitor as aforesaid, in prosecution of his said treasons and treasonable adhering and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused to be composed and wrote a certain letter, &c."*]

Assembling with other traitors to procure sums of money and armed men, and to levy war within this kingdom against the king. 4 Stat. Trial, 207.

Assembling, and consulting concerning the mode of compassing the deposition and death of the king. Trem. P. C. 2.

Promising to assist said traitorous purposes, by providing arms and armed men. Trem. P. C. 2.

Procuring arms in order to effect said treasonable purposes. Trem. P. C. 2.

Assembling in armed and warlike array, and levying war against the king within the realm. Trem. P. C. 3.

Aiding and assisting with provision, and otherwise, persons, who had traitorously levied war in the kingdom. Trem. P. C. 3.

Publishing a traitorous declaration of the Duke of Monmouth's. Trem. P. C. 5.

Comforting and assisting with money a traitor who he knew had fled. Trem. P. C. 6. 2 Stra. 904.

Conspiring to seize Chester castle, and the stores within, and taking a journey for that purpose. Trem. P. C. 158.

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Other overt acts,
on indictment for
compassing depo-
sition and death
of the king.

(a) The word *to* is omitted in 4 Wentw. 8. but that must be a mistake.

Levying public war in the realm. Fost. C. L. 6.

Seizing and taking possession of the city of Carlisle, and castle thereof, and holding same against the king. Fost. C. L. 8.

For high treason, in conspiring to levy war against the king in his realm, on 25 Ed. 3. st. 5. c. 2 (a).

[Commencement of indictment as ante, 2.] That Thomas Hardy, late of, &c. [and eight others] being subjects of our said lord the king, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said lord the king, their supreme, true, lawful, and undoubted lord, and wholly withdrawing the cordial love and true and due obedience, which every true and faithful subject of our said lord the king should and of right ought to bear towards our said lord the king, and contriving and with all their strength intending traitorously to break and disturb the peace and common tranquillity of this kingdom of Great Britain, and to stir, move, and excite insurrection, rebellion, and war against our said lord the king within this kingdom, and to subvert and alter the legislature, rule, and government, now duly and happily established in this kingdom, and to depose our said lord the king, from the royal state, title, power, and government of this kingdom, and to bring and put our said lord the king to death, on the first day of March, in the thirty-third year of the reign of our sovereign lord the now king, and on divers other days and times as well before as after, at, &c. aforesaid, maliciously, with force and arms, &c. did, amongst themselves, and together with divers other false traitors, whose names are to the said jurors unknown, conspire, compass, imagine, and intend to stir up, move, and excite insurrection, rebellion, and war against our said lord the king, within this kingdom of Great Britain, to subvert and alter the legislature, rule, and government now duly and happily established within this kingdom of Great Britain, and to depose our said lord the king from the royal state, title, power, and government of this kingdom, and to bring and put our said lord the king to death. And to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, the said [defendants] as such false traitors as aforesaid, with force and

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First overt act, a meeting of defendants, and conspiracy to cause a convention to alter the constitution, and depose the king (b).

(a) See indictment at length, 4 Wentw. 14 to 20, against Hardy, Tooke, and others, See also 1 East P. C. 60. 98.

See form, 2 Stark. Rep. 117.

(b) See the evidence under this overt act, 1 Campb. 400.

arms, on the said, &c. and on divers other days and times, as well before as after, at, &c. aforesaid, maliciously and traitorously did meet, conspire, consult, and agree among themselves, and together with divers other false traitors, whose names are to the said jurors unknown, to cause and procure a convention and meeting of divers subjects of our said lord the king, to be assembled and held within this kingdom, with intent, and in order that the persons to be assembled at such convention and meeting should and might wickedly and traitorously, without and in defiance of the authority, and against the will of the parliament of this kingdom, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government, now duly and happily established in this kingdom, and depose, and cause to be deposed, our said lord the king from the royal state, power, title, and government thereof. And further to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the said purposes, the said [*defendants*] as such false traitors as aforesaid, together with divers other false traitors whose names are to the jurors aforesaid unknown, the said, &c. and on divers other days and times, as well before as after, with force and arms, at, &c. aforesaid, maliciously and traitorously did compose and write, and did then and there maliciously and traitorously cause to be composed and written, divers books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, and did then and there maliciously and traitorously publish, and did then and there maliciously and traitorously cause to be published, divers other books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, the said books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, so respectively composed, written, published, and caused to be composed, written, and published, purporting and containing therein, among other things, incitements, encouragements, and exhortations to move, induce, and persuade the subjects of our said lord the king to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates, to compose and constitute such convention and meeting as aforesaid, to be so holden as aforesaid, for the traitorous purposes aforesaid. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and

Second overt act, publishing books, &c. inciting persons to meet the treasonable purposes.

Third overt act, consulting as to time and place of convention.

imaginations, aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, the said defendants, as such false traitors as aforesaid, on, &c. aforesaid, and on divers other days and times, as well before as after, with force and arms, at, &c. aforesaid, did meet, consult, and deliberate, among themselves, and together with divers other false traitors, whose names are to the said jurors unknown, of and concerning the calling and assembling such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and how, when, and where such convention and meeting should be assembled and held, and by what means the subjects of our said lord the king should and might be induced and moved to send persons as delegates to compose and constitute the same. *And* further to fulfil, perfect,

Fourth overt act, defendants agreeing that some of them should meet relative to convention.

and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, the said [*defendants*] as such false traitors as aforesaid, together with divers other false traitors, whose names are to the jurors aforesaid unknown, on the said, &c. and on divers other days and times, as well before as after, with force and arms, at, &c. aforesaid, maliciously and traitorously did consent and agree that the said [*defendants*] should meet, confer, and co-operate among themselves, and together with divers other false traitors, whose names are to the said jurors unknown, for and towards the calling and assembling such convention and meeting as aforesaid, for the traitorous purposes aforesaid: *And* further to fulfil, perfect,

Fifth overt act, procuring arms to be made in order traitorously to oppose the king's authority and subvert the government.

and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, the said [*defendants*] as such false traitors as aforesaid, together with divers other false traitors, whose names are to the jurors aforesaid unknown, on, &c. aforesaid, and on divers other days and times, as well before as after, with force and arms, at, &c. aforesaid, maliciously and traitorously did cause and procure to be made and provided, and did then and there maliciously and traitorously consent and agree to the making and providing of divers arms and offensive weapons, to wit, guns, musquets, pikes, and axes, for the purpose of arming divers subjects of our said lord the king, in order, and to the intent, that the same subjects should and might, unlawfully, forcibly, and traitorously oppose and withstand our said lord the king, in the due and law-

ful exercise of his royal power and authority in the execution of the laws and statutes of this realm, and should and might, unlawfully, forcibly, and traitorously subvert and alter, and aid and assist in subverting and altering, without, and in defiance of the authority, and against the will of the parliament of this kingdom, the legislature, rule, and government, now duly and happily established in this kingdom, and depose, and aid and assist in deposing, our said lord the king from the royal state, title, power, and government of this kingdom. *And* further to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, the said [*defendants*] as such false traitors as aforesaid, with force and arms, on, &c. aforesaid, and on divers other days and times, as well before as after, at, &c. aforesaid, maliciously, and traitorously did meet, conspire, consult, and agree, among themselves, and with divers other false traitors, whose names are to the said jurors unknown, to raise, levy, and make insurrection, rebellion, and war within this kingdom of Great Britain, against our said lord the king. *And* further to fulfil, perfect, and bring to effect, their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, the said [*defendants*] as such false traitors as aforesaid, on, &c. aforesaid, and on divers other days and times, as well before as after, at, &c. aforesaid, with force and arms, maliciously and traitorously did meet, conspire, consult, and agree amongst themselves, and together with divers other false traitors, whose names are to the said jurors unknown, unlawfully, wicked, and traitorously, to subvert and alter, and cause to be subverted and altered, the legislature, rule, and government, now duly and happily established in this kingdom, and to depose, and cause to be deposed, our said lord the king, from the royal state, title, power, and government of this kingdom. *And* further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to bring about such subversion, alteration, and deposition as last aforesaid, the said [*defendants*] as such false traitors as aforesaid, together with divers other false traitors, whose names are to the jurors aforesaid unknown, on, &c. aforesaid, and on divers other days and times, as well before as after, at, &c. aforesaid, with force and arms, maliciously and traitorously did prepare and compose, and did then and there maliciously and traitorously cause and procure to be prepared and composed, divers books, pamphlets, letters, de-

Sixth overt act, conspiring to levy war against the king.

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Seventh overt act, conspiring to subvert government.

Eighth overt act, publishing books and pamphlets, inciting subjects to aid in traitorous subversion of laws, &c.

Ninth overt act,
procuring arms to
levy war against
the king.

Common conclu-
sion.

For levying war
against the king
in this realm,
25 Ed. 3. st. 5.
c. 2. (a).

clarations, instructions, resolutions, orders, addresses, and writings, and did then and there maliciously and traitorously publish and disperse, and did then and there maliciously and traitorously cause and procure to be published and dispersed, divers other books, pamphlets, letters, declarations, instructions, resolutions, orders, addresses, and writings, the said several books, pamphlets, letters, declarations, instructions, resolutions, orders, addresses, and writings, so respectively prepared, composed, published, dispersed, and caused to be prepared, composed, published, and dispersed, as last aforesaid, purporting and containing therein, amongst other things, incitements, encouragements, and exhortations, to move, induce, and persuade the subjects of our said lord the king, to aid and assist in carrying into effect such traitorous subversion, alteration, and deposition, as last aforesaid, and also containing therein, amongst other things, information, instructions, and directions, to the subjects of our said lord the king, how, when, and upon what occasions, the traitorous purposes last aforesaid, should and might be carried into effect. *And* further to fulfil, perfect, and bring to effect, their most wicked and evil treason, and treasonable compassings and imaginations aforesaid, the said [*defendants*] as such false traitors as aforesaid, together with divers other false traitors, whose names are to the jurors aforesaid unknown, on, &c. aforesaid, and on divers other days and times, as well before as after, at, &c. aforesaid, with force and arms, maliciously and traitorously did procure and provide, and did then and there maliciously and traitorously cause and procure to be provided, and did then and there, maliciously and traitorously, consent and agree to the procuring and providing, arms and offensive weapons, (to wit) guns, musquets, pikes, and axes, therewith to levy and wage war, insurrection, and rebellion, against our said lord the king, within this kingdom, against the duty of the allegiance of the said [*defendants*] against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in that case made and provided.

That G. G. late of the parish of St. Mary-le-bonne, otherwise Mary Bone, in the county of Middlesex, esquire, com-

(a) See Cro. C. A. 290. Trem. P. C. 3. See form, This indictment was for the 2 Stark. Rep. 117. riots in A. D. 1730. See also

monly called Lord G. G. being a subject of our said sovereign lord George the Third, by the grace of God, of Great Britain, France, and Ireland king, defender of the Faith, &c. not having the fear of God before his eyes, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, and entirely withdrawing the love and true and due obedience which every subject of our said sovereign lord the king should, and of right ought to bear, towards our said present sovereign lord the king, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, on, &c. at, &c. unlawfully, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection, and rebellion, against our said lord the king, within this kingdom of Great Britain. *And* in order to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him the said G. G., he the said G. G. afterwards, that is to say, on, &c. aforesaid, with force and arms, at, &c. aforesaid, with a great multitude of persons, whose names are at present unknown to the jurors aforesaid, to a great number, to wit, to the number of five hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with colours flying, and with swords, clubs, bludgeons, staves, and other weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously, assembled and gathered together against our said present sovereign lord the king, most wickedly, maliciously, and traitorously did ordain, prepare, and levy, public war against our said lord the king, his supreme and undoubted lord, contrary to the duty of his allegiance, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided. [*Second count same as the first, except that the offence was laid to be committed on the 2d June, "and on divers other days and times between that day and the 10th day of the same month."*]

Overt act, assembling armed with offence weapons (a).

That on, &c. our said lord the king went to a certain theatre called Drury Lane Theatre, for the purpose of seeing certain

For hissing and otherwise insulting the king, as he was returning from the theatre, after an attempt had been there made to shoot him (b).

(a) As to this overt act, see 1 East, P. C. 66. Ante, 62, and Trem. P. C. 3. See form, 2 Stark. Rep. 117.

(b) This was the indictment against Dutton, A. D. 1800, and from the Crown Office.

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dramatic performances to be there exhibited, to wit, at, &c. and that upon that occasion, at and in the said theatre, to wit, on the said, at, &c. aforesaid, a certain loaded pistol was shot off and discharged at the person of our said lord the king, with a cruel and wicked intent to kill and destroy our said lord the king, and that afterwards, and as and when our said lord the king departed and returned in his carriage from the said theatre, on that occasion, to wit, on the said, &c. at, &c. aforesaid, A. B. late of, &c. and divers other ill-disposed persons to the number of twenty and more, whose names are to the said jurors unknown, well knowing the premises, but being persons of cruel, turbulent, and seditious minds, and greatly disaffected to our said lord the king, and unlawfully and maliciously contriving and intending, not only riotously and tumultuously to break out and disturb the peace of our said lord the king, but also to insult and vilify our said lord the king, and to move and excite the liege subjects of our said lord the king to hatred and contempt of our said lord the king, did, in the presence and hearing of divers liege and peaceable subjects of our said lord the king, then and there present, with force and arms, unlawfully, riotously, and routously assemble and meet together to disturb the peace of our said lord the king, near to and about the aforesaid carriage of our said lord, (our said lord the king then and there being therein) and being so assembled and met together, did then and there as and whilst our said lord was so returning in his said carriage as aforesaid, in the presence and hearing of the said liege and peaceable subjects, with force and arms make a very great rout, tumult, and disturbance, and did then and there make a very great clamour, shouting, hooting, groaning, and hissing, near to and about the said carriage of our said lord the king, at and against, and in disrespect and contempt of our said lord the king, and did, for a long space of time, to wit, the space of ten minutes next then following, riotously and tumultuously remain and continue there together, near to and about the said carriage of our said lord the king, and did pursue and go along with the carriage, (our said lord the king then and there being therein) so shouting, hooting, groaning, and hissing as aforesaid, in a most riotous, indecent, and disorderly manner, to the great terror and disturbance of the liege and peaceable subjects of our said lord the king then there present, in contempt of our said lord the king and his laws, to the evil example of all others, and against the peace, &c.

And the jurors, &c. do further present, that the said A. B. Second count. so being such person as aforesaid, and maliciously and seditiously contriving and intending to insult and vilify our said lord the king, and to move and excite the liege subjects of our said lord the king to hatred and contempt of our said lord the king, did, as and whilst our said lord the king was so returning in his carriage from the said theatre, on the occasion aforesaid, and in the presence and hearing of divers liege and peaceable subjects of our said lord the king then and there assembled, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, make a very great noise, tumult and disturbance, and did then and there make a very great shouting, hooting, groaning, and hissing, near to and about the said carriage of our said lord the king, and did, for a long space of time, to wit, the space of ten minutes, then and there following, remain and continue there near to and about the said carriage of our said lord the king, and did pursue and go along with the said carriage, (our said lord the king being therein) so shouting, hooting, groaning, and hissing as aforesaid, in a most indecent and disorderly manner, in contempt, &c. [*as in the first count.*]

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That D. I. Eaton, late of, &c. being a wicked, malicious, seditious, and evil-disposed person, and greatly disaffected to

For a libel on the king (a).

(a) See precedent, 4Wentw. 201. Burn, J. Libel, III. For the modern precedents of indictments or informations for libels on the king or royal family, administration, government, conduct of the army, &c. see post, 87, 3 to 96, 7, and Cowp. 672. 4 B. & A. 115. 2 Campb. 398. 6 East, 583. 2 Leach, 4th ed. 593. 4Wentw. 199. 9 St. Tr. 680. Hand's Prac. 255. 228. 11 St. Tr. 264. Cro. C. C. 8th edit. 255. 258. Cro. C. A. 112. For older precedents, Trem. P. C. 35 to 65. Clift. Ent. 388. West, 200. 256. 309. 364. Wentw. vol. vi. Index, tit. Sedition.

As to the offence of libels or words against the king, &c. see 1 East, P. C. 117 to 121. 4 Bla. Com. 123. Cro. Car. 117

to 127. Holt on Libel, 114. Stark. on Libel, 529. 4 B. & A. 95. On an information for falsely and maliciously publishing a libel concerning the king, by giving it out that his majesty was afflicted with mental derangement, and a verdict of guilty having passed against the defendants, it was resolved, amongst other things, 1st, that to assert falsely of his majesty, or of any other individual, that he labours under the affliction of mental derangement, is a criminal act, and a malicious intention may be inferred from the mere act of publication, unless evidence is given by the defendant to rebut such inference; 2d, that such assertion concerning the king, being in itself mischievous to the pub-

our said lord the king, and to the administration of government of this kingdom, and unlawfully, maliciously and seditiously contriving, devising, and intending to scandalize, traduce, and vilify our said lord the king, and to alienate and withdraw the fidelity, affection, and allegiance of his majesty's subjects, from his said majesty's person and government, on, &c. at, &c. unlawfully, maliciously, and seditiously

lic, is an indictable offence, without any allegation or direct proof of a malicious intention, 3 D. & R. 464. 3 B. & C. 257. S. C. By the 6 Geo. 3. c. 9, the offence of publishing blasphemous and seditious libels in newspapers, &c. is subject to certain fines, &c. and secured against by the regulations therein mentioned.

With respect to the *form of the indictment*, see the notes to the precedents of Indictments for Libels, post. It is not necessary or proper to allege that the defendant "traitorously" wrote the libel or uttered the words, but that allegation may be rejected as surplusage. 2 Ld. Raym. 879. 3 Salk. 198. A publication must be charged, composing or writing is not sufficient; without a publication, 4 Barn. & Ald. 95. But a libel written in the county of L. with intent to publish it, and afterwards published in the county of M. is indictable in either county, *Id.*

This offence is punishable by fine and imprisonment. After judgment by default, a seizure of the copies of the libel is authorized, by and in the manner pointed out by the 60 Geo. 3. c. 8. s. 1. 2. 3. After conviction for a second offence of this description, he is subject to the punishment inflicted in cases of high misdemeanors, or to banishment for so long as deemed fit, *ib. s. 4.* and

persons returning from banishment are to suffer transportation, *ib. s. 6.*

Where the words import a crime of themselves, it is not necessary to show that they were published with an intent to injure the king or government, 2 Ld. Raym. 879. 3 Salk. 198. The allegation that the words were uttered, or the libel written "of and concerning," are a sufficient introduction of the matter contained in the libel, and a sufficient averment, that it was written of and concerning the king's government, &c. Cowp. 672. 4 B. & A. 314, and as to these words in general, see post, as to framing indictments for libels in general. The indictment may allege that the libel was "according to the tenor and effect following;" and where the matter is apparently libellous, may state that the defendant "*inter alia*" published, &c. Holt, 422. Though the defendant may insist on reading other extracts, 2 Campb. 398. But the words "to the effect following" would be insufficient, without the words "according to the tenor." Holt, 422. It may be charged that the defendant "transcribed and collected" libellous matters, which is criminal, without alleging a publication, Holt, 422. See post, as to framing indictments for libels in general.

did publish, and caused to be published, a certain pamphlet, entitled, "Politics for the People, or Hog's Wash," containing therein, among many other things, certain scandalous, malicious, inflammatory, and seditious matters, of and concerning our said lord the king, that is to say, You must know then, &c. [*here set out libel, with proper innuendoes, see 4 Wentw. 20.*] In contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

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And the jurors aforesaid, upon their oath aforesaid, do further present, that the said D. I. Eaton, so being such a person as aforesaid, and so devising, contriving, and intending as aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. unlawfully, maliciously, and seditiously did publish, and cause and procure to be published, a certain other printed pamphlet, containing therein, amongst other things, certain scandalous, malicious, inflammatory, and seditious matters, of and concerning our said lord the king, according to the tenor and effect following, that is to say, [*state other libellous matter, with different innuendoes,*] in contempt of our said lord the king and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. [*There was a third count nearly resembling the second.*]

Second count.

That defendants being seditious, malicious, and ill-disposed persons, and being greatly disaffected to our present sovereign George the Third, &c. and to his administration of the government of this kingdom, and most unlawfully, wickedly, and maliciously devising, designing, and intending, as much as in them lay, to bring our said lord the king and his administration of the government of this kingdom, and the persons employed by him in the administration of the government of this kingdom, into great and public hatred and contempt among all his liege subjects, and to alienate and withdraw from our said lord the king the cordial love and affection, true and due obedience, fidelity, and allegiance of the subjects of our said lord the king,

For a libel on the king and his administration (a)

(a) 2 Campb. Rep. 398. tempt, 2 Leach, 4th edit. 593.
6 East, 583, for a libel, bringing a proclamation into con- As to form of indictment, ante, 36, note.(a).

on, &c. at, &c. did unlawfully, seditiously, and maliciously, print and publish, and cause, &c. a certain scandalous, malicious, and seditious libel, of and concerning our said lord the king, and his administration of the government of this kingdom, to the tenor and effect following, that is to say, [*here set out the matter charged as libellous,*] to the great scandal, &c.

For a libel on hereditary monarchy and constitution (a).

[88]

That Daniel Isaac Eaton, late of, &c. being a wicked, malicious, *seditious*, and ill-disposed person, and being greatly disaffected to our sovereign lord the now king, and to the constitution and government of this kingdom, and most unlawfully, wickedly, seditiously, and maliciously devising, contriving, and intending to scandalize, traduce, and vilify our said lord the now king, and the hereditary succession to the crown and regal government of this kingdom, as by law established, and to alienate and withdraw from our present sovereign lord the now king, the true and due obedience, fidelity, and allegiance of his subjects, and wickedly and seditiously to disturb the peace and tranquillity of this kingdom, on, &c. with force and arms, at, &c. aforesaid, he the said Daniel I. Eaton, unlawfully, wickedly, maliciously, and seditiously did publish, and cause to be published, a certain scandalous, malicious, and seditious libel, entitled, "Rights of Man, Part Second, combining principle and practice, by Thomas Paine, secretary for foreign affairs to Congress, in the American war, and author of the works entitled, 'Common Sense,' and the first Part of the 'Rights of Man;'" London, printed by H. D. Simmons, Paternoster Row, 1792." In which said libel are contained, amongst other things, divers scandalous and malicious and seditious matters, of and concerning the hereditary succession to the crown and royal government of this kingdom, as by law established, (that is to say) in one part thereof, according to the tenor and effect following, (that is to say) it cannot be proved by what right hereditary government (meaning, amongst other things, the said hereditary government of this kingdom) could begin, neither, &c. [*Here state libellous matter, with proper innuendo, see 4 Wentw. 199.*] And in another part, according to the tenor and effect following, (that is to say) hereditary succession, (meaning, amongst other things, the said hereditary

(a) See precedent, 4 Wentw. Com. 91, 2. As to form of 199. Cowp. 672. 9 State Tr. indictment, ante, 86, note (a). 680. 1 East P.C. 90. 4 Bla.

succession to the government of this kingdom), is a burlesque, &c. [*Here state other libellous matter.*] In contempt of our said lord the now king, in open violation of the laws of this kingdom, and to the great danger of our happy constitution, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

[*Commencement of information as ante, 6.*] That his late royal highness Frederick prince of Wales, was the eldest son of our late sovereign lord king George the Second, and that his said late royal highness Frederick prince of Wales, heretofore intermarried with a princess of the ancient and illustrious house of Saxe Gotha, her late royal highness the princess of Wales; and had issue by her said late royal highness the princess of Wales, our sovereign lord the now king, and divers other princes and princesses, and our said sovereign lord the now king hath also a numerous and illustrious offspring, divers princes and princesses, by our most sovereign lady the now queen, to wit, at, &c. aforesaid. And that there now is, and before, and at the time of the publishing of the false, scandalous, wicked, and malicious libels hereinafter mentioned, there subsisted between our said sovereign lord the now king and the house of Saxe Gotha, a perfect friendship, harmony, and strict alliance, yet, that J. A. late of, &c. well knowing the premises, but wickedly and maliciously contriving and intending wickedly to asperse, defame, traduce, and vilify our said sovereign lord the now king, his royal offspring and family, and to lessen the love and alienate the affections of his majesty's subjects from our said sovereign lord the now king, his royal offspring and family, descendants of their late royal highnesses the prince and princess of W. and to disturb and disquiet the minds of our said sovereign lord the now king, his royal offspring and family, and also to prevent and deter any foreign prince or princesses from intermarrying with, or contracting any alliance by marriage with the royal offspring of our said lord the now king, and thereby greatly to diminish the happiness of our said lord the now king, and of his said offspring, and wickedly and maliciously intending to disturb the

Information for
libel upon royal
family (a).

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(a) Hand's Prac. 255. As to form of indictment, ante, 86, note (a).

harmony and dissolve the alliance subsisting between our said lord the king and the house of Saxe Gotha, and thereby to weaken the power and to lessen the strength of our said lord the king's government, and of this kingdom, on, &c. with force and arms, at, &c. aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published, in a certain paper, entitled, "The General Advertiser, No. 3742, Tuesday, November 18th, 1788," a most wicked, false, scandalous, and malicious libel, of and concerning the marriage and alliance of his said late royal highness the prince of Wales with her said late royal highness the princess of Wales, and of and concerning their family and descendants, according to the tenor following, (that is to say) old George the Second, (meaning our late sovereign lord king George the Second) was very much against the alliance of his eldest son Frederick, (meaning his said late royal highness Frederick prince of Wales) father of the present king (meaning our sovereign lord the now king) with the house of Saxe Gotha, (meaning the alliance by the marriage of his said late royal highness Frederick prince of Wales with her said late royal highness the princess of Wales, a princess of the ancient and illustrious house of Saxe Gotha), he (meaning our said late sovereign lord king George the Second) often said it (meaning the alliance with the house of Saxe Gotha, by the marriage of his said late royal highness Frederick prince of Wales with her said late royal highness the princess of Wales would bring the evil and insanity into his family, (meaning into the family of our said late sovereign lord George the Second, the descendants of his said late royal highness Frederick prince of Wales and the said late princess of Wales) old Jeptia (meaning our said late sovereign lord king George the Second) was right, to the great contempt, disquiet, and affliction of our said lord the now king, his royal offspring and family, to the great danger of disturbing the harmony subsisting between our said lord the king and the house of Saxe Gotha, in open violation of the laws of this kingdom, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king, giveth the court further to understand and be informed, that the said J. A. of his further malice against our said lord the now king, his royal offspring and family, and again unlawfully, wickedly, maliciously

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Second count.

contriving, and intending as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, wickedly and maliciously did publish, and cause and procure to be published, in a certain other paper, entitled, "The General Advertiser, No. 3742, Tuesday, November 18th, 1788," a certain other false, wicked, scandalous, and malicious libel, of and concerning the marriage and alliance of his said late royal highness the prince of Wales with her said late royal highness the princess of Wales, and of and concerning the family and descendants, according to the tenor following, that is to say, old George, &c.* [*Here state libel, with innuendoes varying from first count, see Hand's Prac. 258, and conclude as in first count.*]

That John Horne, late of, &c. being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said present sovereign lord the king, and to his administration of the government of his kingdom, and the dominions thereunto belonging, and wickedly, maliciously, and seditiously intending, devising, and contriving to stir up and excite discontents and seditions among his majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects from his said majesty, and to insinuate and cause it to be believed, that divers of his majesty's innocent and deserving subjects had been inhumanly murdered by his said majesty's troops in the province, colony, or plantation of the Massachusetts Bay, in New England, in America, belonging to the crown of Great Britain, and unlawfully and wickedly to seduce and encourage his said majesty's subjects in the said province, colony, or plantation, to resist and oppose his majesty's government, on, &c. with force and arms, at, &c. wickedly, maliciously, and seditiously did write and publish, and cause and procure to be written and published, a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning his said majesty's government, and the employment of his troops, according to the tenor and effect following, "King's Arms Tavern, Cornhill, June 7, 1775. At," &c. [*here set out libel and innuendoes,*

For a libel on king's government and employment of his troops (a).

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(a) Cowp. 672, and 11 State Tr. 264. Cro. C. C. 8th edit. 258. Cro. C. A. 112. As to form of indictment, ante, 86,

note (a). See the form, in *Rex v. Burdett*, 4 B. & A. 115. 314.

Cowp. 672.] in contempt of our said lord the king, in open violation of the laws of this kingdom, to the evil and pernicious example of all others, and against the peace of our said present sovereign lord the king, his crown and dignity. [There were other counts for publishing, &c. in different newspapers, see *Cowp.* 673. 11 *State Trials*, 264. *Cro. C. A.* 112. *Cro. C. C.* 8th edit. 258.]

For a libel on the government and constitution of the kingdom, and also on the administration, in order to deter subjects from resisting invasion (a).

That at the time of the printing and publishing of the several scandalous, malicious, and seditious libels hereinafter mentioned, and long before, there was and yet is an open and public war carried on between our said lord the king and the persons exercising the powers of government in France, and the French, to wit, at, &c. and that at the time of the printing and publishing of the several scandalous, malicious, and seditious libels hereinafter mentioned, it was publicly rumoured and reported amongst the liege subjects of our said lord the king, that the said persons exercising the powers of government in France, so being enemies of our said lord the king, did intend and were preparing to invade this kingdom with an armed force, and in an hostile manner, to wit, at, &c. aforesaid; and that J. S. J. late, &c. being a malicious, seditious, and ill-disposed person, and being greatly disaffected to our said sovereign lord the king, and to the government and constitution of this kingdom, and most unlawfully, seditiously, and maliciously contriving and intending to traduce, vilify, and bring into hatred and contempt amongst the liege subjects of our said lord the king, the government and constitution of this kingdom, both in church and state, as now by law established, and also our said lord the king's administration of the government of this kingdom, and the persons employed by our said lord the king, in the administration of the government of the kingdom, and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king, from our said lord the king and his government, and also most unlawfully, maliciously, and seditiously devising, and intending to dissuade and discourage the liege subjects of our said lord the king from resisting and opposing the said enemies of our said lord the king, in case the said

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(a) *Hand's Prac.* 228. See form of indictment for a libel on administration in Ireland and certain ministers there

6 *East*, 583. As to form of indictment, in general, ante, 86, note (a).

enemies should make an hostile invasion into this kingdom, on, &c. at, &c. aforesaid, wickedly, maliciously, and seditiously did publish, and cause to be published, a certain scandalous, malicious, and seditious libel, containing therein, among other things, divers scandalous, malicious, and seditious matters, of and concerning the people, nobles, ecclesiastical dignitaries, government, and constitution of this kingdom, and of and concerning the administration of the government of this kingdom, by our said lord the king, and of and concerning the persons employed by our said lord the king in the administration of the government of this kingdom; and also of and concerning an hostile invasion into this kingdom, to be made by the said enemies of our said lord the king, in one part thereof, according to the tenor and effect following, that is to say, undoubtedly, &c.

[*here set out part of libel with innuendoes, see Hand. 230.*]

And in another part thereof, according to the tenor and effect following, that is to say, The established conduct of those ministers (meaning persons employed by our said lord the king), in the administration of, &c. [*here set out another libellous part, with innuendoes, Hand. 232.*] in contempt of our said lord the king and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our

Second count.

said lord the king, for our said lord the king giveth the court here further to understand and be informed, that the said J. S. J. so being such person as aforesaid, and unlawfully, seditiously, and maliciously contriving and intending to traduce and vilify and bring into hatred and contempt amongst the liege subjects of our said lord the king, the commons house of parliament of this kingdom, and the persons employed by our said lord the king in the administration of the government of this kingdom, particularly the right honorable W. P. being one of the persons employed by our said lord the king in the administration of the said government, and to insinuate and cause it to be believed that the persons employed by our said lord the king in the administration of the said government, were unwilling to make peace with the aforesaid enemies of our said lord the king, upon reasonable and proper terms, and thereby to withdraw the affection and allegiance of the liege subjects of our said lord the king from our said lord the king and his government, on, &c. at, &c. aforesaid, wickedly, maliciously, and seditiously did publish, and cause to be published, a certain other scandalous, malicious, and seditious libel, containing therein, amongst other things, divers

scandalous, malicious, and seditious matters of and concerning the persons employed by our said lord the king, in the administration of the government of this kingdom, and particularly the said W. P. and of and concerning the commons house of parliament of this kingdom, to the tenor and effect following; that is to say, The tyrannical temper, and violent measures of the present administration (meaning the persons employed by our said lord the king in the administration of this kingdom), exemplified by a transgression of the liberal policy of our ancestors, and the confessed principles of constitutional freedom, in such numerous and momentous instances, form so great a contrast to the free energies of republican equality, as will not allow me to suppose, for a single moment, that Mr. P. (meaning the said W. P.) and his colleagues, (meaning the persons employed together with the said W. P. by our said lord the king, in the administration of the government of this kingdom), entertained a sincere wish of a hearty reconciliation and friendly intercourse with the French government. They must be sensible how such a commerce, sooner or later, must dissolve an usurpation of power, in which they have fenced themselves, by a copious manufacture of their staple commodities, posts, and peerages, by a diffusion of corrupt humours through every vein of the body politic, even to the evanescent ramifications of its capillary vessels, and by a prostitute majority of borough-mongers, loan-jobbers, military officers, pensioners, and official sycophants in the lower house, meaning the commons house of parliament of this kingdom), nay, through such amplitude of circumstance is their vicious and contaminating influence now propagated in every direction, that their power, is irresistible throughout the country, notwithstanding all their miscarriages and misconduct, notwithstanding their palpable inability, and the acknowledged inefficacy of their measures; for I almost question whether a dozen men, at all distinguished for intellect and virtue, and political disquisition, who are at this hour the advocates of the present ministry (meaning the persons employed by our said lord the king in the administration of the government of this kingdom), can be found in Britain, from old Belerium to the northern main, nor connected in fact or expectancy by themselves or relatives, with some who depend on the emoluments of the established system, as churchmen, officers in the army or navy, contractors, money-lenders, lawyers, or civil placemen. In contempt of our said lord the

king and his laws, to the great scandal of our said lord the king and his government, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. [*Other count, see Hand's Prac.* 237.]

That A. B. late of, &c. labourer, being a wicked, seditious, and evil-disposed person, and greatly disaffected to our said lord the king, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and of the government established within this^e realm, on, &c. with force and arms, at, &c. in the presence and hearing of divers liege subjects of our said lord the king, maliciously, unlawfully, wickedly, and seditiously did publish, utter, and declare, with a loud voice, of and concerning our said lord the king, these words following; that is to say, "His majesty George the Third, (meaning our said lord the king,) is * * * * *, thank God for it, I (meaning the said A. B.), hope he, (meaning our said lord the king), will soon be no more, damnation to all royalists;" to the great scandal of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others,, and against the peace, &c. [*Second count as follows.*] That the said A. B. being such wicked, seditious, and evil-disposed person as aforesaid, and greatly disaffected to our said lord the king, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and the government established within this realm, on, &c. with force and arms, at, &c. unlawfully, wickedly, maliciously, and seditiously, in the presence and hearing of divers liege subjects of our said lord the king, again did publish, utter, and declare, of and concerning our said lord the king, and his good, true, and faithful subjects, these words following; that is to say, "I (meaning the said A. B.) hope

For seditious words of the king and royalists (a).

Second count.

(a) See other precedents, Cro. C. C. 8th ed. 436. 7th ed. 691 Williams, J. tit. Seditious Practices. The indictment need not state that the words were spoken with intent to alienate his majesty's subjects, nor should it be laid that the de-

fendant traitorously spoke, &c. though the allegation will not vitiate, 2 Ld. Raym. 879. As to the form of indictment, in general, ante, 86, note (a). As to the punishment, see Bla. Rep. 37.

king George the Third (meaning our said lord the king), will soon be no more ; damnation to all royalists." [Conclusion as before.]

For speaking seditious words of the king and the officers of his guards (a).

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That J. S. late of, &c. being a pernicious, wicked, and evil-disposed person, and contriving, practising, and falsely, maliciously, turbulently, and seditiously intending the peace and common tranquillity of our lord the king, and this kingdom of England, to disquiet, molest, and disturb, and to bring our most serene lord, George the Third, king of Great Britain, into great hatred, contempt, and scandal, with all his liege and faithful subjects of this realm, and the colonels, captains, and other military officers and soldiers of our said lord the king, to scandalize and vilify, on, &c. with force and arms, at, &c. having discourse then and there with divers persons, concerning our said lord the king, and the army and guards of our said lord the king, and of their business, in the presence and hearing of divers liege subjects of our said lord the king, falsely, maliciously, unlawfully, wickedly, and seditiously did then and there say, assert, affirm, and pronounce, and with a loud voice declare these false, fictitious, malicious, seditious, and opprobrious English words following, of and concerning our said lord the king, and of and concerning the colonels, and the rest of the officers of the guards, that is to say, the colonels and the rest of the officers (meaning the said colonels and officers, in the guards of our said lord the king) are a company of rogues and villains, for their business is to uphold their master (meaning our said lord the king), who (meaning our said lord the king) is a villain and a rogue, and never kept his word in any thing he (meaning our said lord the king) said, to the great scandal of our said lord the king, and the said colonels and other officers of the guards of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

(a) See precedent, Cro. C. C. 7th ed. 689. See the last precedent note, and ante, 86, differs from that in Cro. C. C. note (a).

That A.B. late of, &c. dissenting preacher, being a pernicious and a seditious man, and a person of a depraved, impious, and disquiet mind, and contriving, and maliciously and seditiously intending to disquiet, molest, and disturb, the peace and common tranquillity of our lord the king, and of this kingdom, and to traduce and vilify the happy constitution and government of this kingdom, and to bring our said lord the king, and his government of this kingdom into hatred and contempt, with all the subjects of this realm, and to excite the subjects of our said lord the king to sedition against his government, on, &c. at, &c. to complete, perfect, and bring to effect, his said most wicked and seditious contrivances and intentions, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully, wickedly, maliciously, and seditiously did preach, speak, utter, and with a loud voice publish, among other things, of and concerning the revolution in the government of this kingdom, in the year of our Lord 1688, and the laws of this kingdom then made, these false, scandalous, and seditious words following; that is to say, the laws (meaning the laws of this kingdom), made at that time, (meaning at the time of the said revolution) have been since abused, and brought into disuse, and it particularly behoves me (meaning the said A.B.) to speak of the present times (meaning thereby that the said laws were at the present time abused, and brought into disuse by his said majesty's government) to the great scandal, &c. of our said lord the king and his laws, to the great danger of our happy constitution, to the evil example, &c. and against the peace, &c. And the jurors upon their oath, aforesaid, further present, that the said A.B. being such person as aforesaid, and contriving, and maliciously and seditiously intending as aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, to complete, perfect, and bring to effect, his said most wicked and seditious contrivances and intentions, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully, wickedly, maliciously, and seditiously did preach, speak, utter, and with a loud voice publish, amongst other things, of and concerning a supposed revolution in the government of France, whereby the ancient monarchical government of that country was supposed to be

Against a dissenting preacher for seditious words in a sermon (a).

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(a) This was the indictment against Winterbotham, A.D. 1793, on which he was con-

victed, and obtained from the crown office.

subverted, and a republican government established in its place, and of and concerning the government of this kingdom, these scandalous and seditious words following; that is to say, I (meaning the said A. B.) highly approve of the revolution in France (meaning the said revolution in the government of France) and I (meaning the said A. B.) do not doubt but it has opened the eyes of the people of England (meaning that the people of England) to see that there was a necessity for a similar revolution in the government of this kingdom, to the scandal, &c. [*as in the first count.*]

Information for
seditious words
respecting the
king, peers, and
constitution (a).

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That A. B. late of, &c. being a wicked, seditious, and ill-disposed person, and having no regard for the laws of this realm, and most unlawfully, wickedly, maliciously, and seditiously devising, contriving, and intending to disturb the peace and tranquillity of our said lord the king, and of this kingdom, and to bring our said lord the king, and the peers of this realm, and the constitution and government of this kingdom, as by law established, into hatred and contempt, with the subjects of this realm, and to asperse and vilify our said lord the king, and the peers of this realm, and to alienate and withdraw the affections and fidelity of his said majesty's subjects, from his majesty's person and government, on, &c. in order to complete, perfect, and bring to pass, his most wicked and seditious contrivances and intentions aforesaid, in the presence and hearing of divers subjects of our said lord the king, unlawfully, wickedly, maliciously, and seditiously did say, utter, and publish, of and concerning the constitution and government of this kingdom, the scandalous and seditious words following, (to wit) I (meaning himself the said A. B.) would have no king or lords, (meaning thereby that he would have no king or peers of this realm in the constitution and government thereof,) in contempt of our said lord, &c. [*as in the last precedent.*] And the said attorney-general, &c. that the said A. B. being such person as aforesaid, and again unlawfully, wickedly, and maliciously, and seditiously devising, contriving, and intending as aforesaid, afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in order to complete, perfect, and bring to effect his most wicked and seditious contrivances and intentions aforesaid, in the presence and hearing of divers subjects of our said lord

(a) This was the information against Crompton, and obtained from the crown office.

the king, unlawfully, wickedly, maliciously, and seditiously did say, utter, and publish, of and concerning the constitution and government of this kingdom, the scandalous and seditious words following, to wit, I (meaning himself the said A. B.) am for a revolution, no king, no king, no lords (meaning a revolution in the constitution and government of this kingdom, and that there should be no king, no peers of this realm in the constitution, and government thereof), &c. in contempt, &c. [*as before.*]

That A. B. late of, &c. being a person of depraved, impious, and disquiet mind, and of a seditious disposition, and contriving, practising, and maliciously, turbulently, and seditiously, intending the peace and common tranquillity of our lord the king, and of this kingdom, to disquiet, molest, and disturb, and to bring our most serene sovereign lord George the Third, now king of Great Britain, &c. into great hatred and contempt with all his liege and faithful subjects of this realm, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects, from his said majesty, and to excite and move his said majesty's subjects to hatred and dislike of the government and constitution, established within this realm, he the said A. B. his most wicked contrivances, practices, and intentions aforesaid, to complete, perfect, and render effectual, on, &c. in a certain discourse which the said A. B. then and there had, with divers subjects of our said lord the king, of and concerning our said lord the king, and the government and constitution established within this realm, in the presence and hearing of divers liege subjects of our said lord the king, then and there present, maliciously, unlawfully, wickedly, and seditiously, did say, assert, affirm, and pronounce, and with a loud voice did publish these malicious, seditious and opprobrious English words following, that is to say, I (meaning the said A. B.) am for equality; I (meaning the said A. B.) see no reason why any man should not be upon a footing with another. It is every man's birthright. And, the said A. B. being thereupon then and there asked by one of the persons then and there present, how he the said A. B. dared to hold such language in any public or private company, and what he meant by equality, he, the said A. B., then and there wickedly, maliciously, and se-

For seditious words against the king and government (a).

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(a) This was the indictment which he was convicted; obtained from the crown-officer.

Second count.

ditionously, in the presence and hearing of those subjects, replied in these words, that is to say " why, no kings ;" and thereupon the said A. B. being thereupon further asked, if he meant no kings in this country, he, the said A. B. wickedly, maliciously, and seditiously, in the presence and hearing of those subjects, answered in these words, that is to say, " yes, no king, the constitution of this country is a bad one," (meaning thereby, that he the said A. B. was for having no king in this realm, and that the constitution of this realm was a bad one in having a king) to the great scandal and contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c.

And the jurors, &c. do further present, that the said A. B. being such wicked and evil-disposed person as aforesaid, and further contriving and intending as aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, in another discourse which the said A. B. then and there had with divers liege subjects of our said lord the king, of and concerning our said lord the king, and the government established within this realm, in the presence and hearing of divers other liege and faithful subjects of our said lord the king, then and there present, maliciously, seditiously, and wickedly did say, assert, affirm, and pronounce, and with a loud voice did declare and publish these other malicious and seditious English words following; that is to say, I (meaning the said A. B.) am for equality, and the said A. B. being thereupon then and there asked by one of the persons then and there present, if he the said A. B. meant thereby equality, and no king in this country, he the said A. B. then and there, in the presence and hearing of those subjects, maliciously and seditiously replied, and with a loud voice published these words following, that is to say, " yes, no king, and there ought to be no kings" (meaning thereby, amongst others, that there ought to be no king in this realm) to the great scandal, &c. [*as in first count.*] And the jurors, &c. do further present, that the said A. B. being such wicked and evil-disposed person as aforesaid, and wickedly and seditiously devising and intending as aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, in the presence and hearing of divers other liege and faithful subjects of our said lord the king, then and there present, maliciously, seditiously, and wickedly did utter, and with a loud voice pronounce, assert, and affirm, that there ought to be no king in this country (meaning this kingdom) to the great scandal, &c. [*as in first count.*]

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Third count.

That A. L. late of, &c. not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, on, &c. with force and arms, at, &c. in and upon the right honorable Sir E. H. knight, one of the privy counsellors of our said lord the king, and in the due execution of his said office in council, then and there being, feloniously did make an assault and him, the said Sir E. H. did then and there feloniously strike and wound, against the form of the statute in such case made and provided, in contempt of our said lord the king and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

On 9 Anne, c. 16, for *feloniously assaulting a privy counsellor in the execution of his office* (a).

That W. R. late of, &c. being a malicious and seditious man, and deceitfully, wickedly, and maliciously contriving and intending the right honorable Sir R. W. knight of the most noble order of the garter, chancellor and under-treasurer of the exchequer of our said lord the king, and one of the commissioners of our said lord the king for executing the office of treasurer of the exchequer of our said lord the king, and one of the privy council of our said lord the king, to detract, scandalize, and vilify; and to represent the said Sir R. W. as an unjust officer and minister, and little fit to be used and intrusted by our said lord the king in the weighty affairs of this kingdom, and also to bring the said Sir R. W. (as much as in him the said W. R. lay) into great hatred, contempt, and disgrace, not only with all his majesty's liege subjects, but also with our said lord the king; and also deceitfully, wickedly, and maliciously contriving and intending to detract, scandalize, and vilify the peers of this realm, the bishops of the church of England by law established, and the members of the honorable house of commons in this kingdom, and to represent the said peers, bishops, and members of the house of commons as corrupt

For a libel of the chancellor of the exchequer, and of the peers, bishops, and commons (b).

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(a) See precedent, Cro. C. C. 7th ed. 177. 1 East P. C. 89. See form, 3 Hen. 7. c. 14. Co. Ent. 173. 482. As to the offence of killing or conspiring to kill the chancellor, &c. see 1 East P. C. 89. Com. Dig. Justices, K. 8. 1 Hale, 230. If the assault on the privy counsellor be accompanied with

a tumult, it may be laid as the overt act of high treason, in levying war, &c. see Cro. Car. 583.

(b) See precedent, Cro. C. C. 8th ed. 255, which varies from 7th ed. 462. As to the form of the indictment, in general, ante, 86, note (a).

persons, and to bring them into great scandal, infamy, hatred, and disgrace, with all the liege subjects of our said lord the king, and for that purpose did, on, &c. with force and arms, at, &c. wickedly and maliciously print and publish, and cause and procure to be printed and published, a certain false, scandalous, and seditious libel, intituled, *Robin's Reign or Seven's the Main, being an explanation of C. D.'s seven Egyptian Hieroglyphics prefixed to the seven volumes of the Craftsman; The dye is flung*, in which said libel of and concerning the said Sir R. W. and the said peers, bishops, and commons of this kingdom, and also of and concerning the votes given by the said peers, bishops, and commons, are contained, among other things, divers scurrilous, feigned, false, scandalous, seditious, and malicious matters, according to the tenor following, to wit, *see R—t* (meaning the said Sir R. W.), *C—s* (meaning the said members of the said house of commons of this kingdom), *L—ds* (meaning the said lords of this kingdom), and *B—s* (meaning the said bishops of the church of England by law established) *buy: speak then, spectator, is corruption high? mark well the visage of each slavish tool, the blockhead, hypocrite, and gaudy fool, 'tis these great men* (meaning the said peers, bishops, and members of the said house of commons), *who give our wealth away, borrow in p—s* (meaning pensions), *but in v—s* (meaning votes of the said lords, bishops, and commons) *they pay; like Judas thus for gold betray the state, his crimes they* (again meaning the said lords, bishops, and commons) *share, and may they* (again meaning the said lords, bishops, and commons) *share his fate.* To the great scandal and infamy of the said Sir R. W. and also of the said peers, bishops, and members of the said house of commons of this kingdom, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown, and dignity.

On 9 Geo. 2. c. 30, s. 1, for felony, in hiring and retaining a person to serve the French king as a soldier (a).

That P. I. late of, &c. contriving and intending unlawfully to seduce, draw, and entice one J. W. a subject of the crown of Great Britain from his the said J. W.'s allegiance and obedience, which he the said J. W. as a natural-born subject of the

(a) See precedent, Cro. C. C. c. 47. s. 1. and 16 East, 406. 8th ed. 453, which varies from See 1 East P. C. 81, 82. 91, 7th ed. 718. See also 1 Geo. 1. 92, 3.

said crown of Great Britain, owed to our present sovereign lord the king as his supreme, true, and natural lord, and to enlist and enter himself the said J. W. as a soldier in the service of a foreign prince, to wit, Louis the present French king: he the said P. I. on, &c. with force and arms, at, &c. aforesaid, did wilfully, maliciously, and feloniously hire and retain the said J. W. then being a subject of our said lord the king, by promising and assuring him the said J. W., that if he (meaning him the said J. W.) would go abroad and enter into the service of the French king, he (again meaning him the said J. W.) should be made a serjeant, and should have the liberty of returning to England when he (again meaning the said J. W.) should think fit, and did also then and there unlawfully, corruptly, and feloniously treat and entertain the said J. W. with meat and drink at the costs and charges of him the said P. J., and did also then and there give and deliver to the said J. W. the sum of five shillings in monies, numbered of lawful money of Great Britain, with an intent to cause the said J. W. to enter himself to serve a foreign prince, to wit, Louis the present French king, as a soldier, (without leave or licence of our said lord the king first had and obtained, for enlisting any of the subjects of our said lord the king to serve any foreign prince, state, or potentate, as soldiers, under the sign manual of our said lord the king) in contempt of our said lord the king and his laws, to the evil example of all others, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown, and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said P. J. in further prosecution of his wicked and malicious contrivance and intention aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, wilfully, maliciously, and feloniously did cause and procure the said J. W. being a subject of our said lord the king, to embark on board a certain ship then and there lying and being on the river of Thames, with an intent to cause the said J. W. to go beyond the seas, in order to be enlisted to serve a foreign prince, to wit, Louis the present French king, as a soldier, without leave or licence of our said lord the king first had and obtained, for enlisting any of the subjects of our said lord the king to serve any foreign prince, state, or potentate, as soldiers, under the sign manual of our said lord the king, in contempt of our said lord the king and his laws, to the evil example of all others,

Second count.

against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown, and dignity.

On 37 Geo. 3. c. 70, for endeavouring to seduce a soldier from his duty and allegiance and to mutiny (a).

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That Richard Fuller, being a wicked, evil-disposed person, after the passing of a certain act of parliament made in the 37th year of the reign, &c. entitled, "An act for the better prevention and punishment of attempts to seduce persons serving in his majesty's forces by sea or land, from their duty and allegiance to his majesty, or to incite them to mutiny or disobedience;" and whilst the said act continued and was in force, to wit, on, &c. at, &c. feloniously did, maliciously and advisedly, endeavour to seduce Matthew Lowe, he the said Matthew Lowe then and there being a person serving in his majesty's forces by land, from his duty and allegiance to his said majesty, against the form of the statute, &c. and against the peace, &c. *Second count*, that he feloniously did, maliciously and advisedly, endeavour to incite and stir up the said Matthew Lowe, he the said Matthew Lowe then and there being a person serving in his said majesty's forces by land as aforesaid, to commit an act of mutiny, and to commit traitorous and mutinous practices, *contra formam*, &c. *contra pacem*, &c.

On 37 Geo. 3. c. 123, for administering oath to a person not to inform or give evidence, &c. against any member of an illegal society for seditious purposes (b).

That the defendants, after the passing of a certain act of parliament, made and passed, &c. to wit, on, &c. at, &c. feloniously did administer, and cause to be administered, to one John Howorth a certain oath and engagement, then and there accordingly taken by the said J. H., and which oath and engagement was then and there intended to bind the said J. H.

(a) See precedent, 1 B. & P. 180, and 1 East P. C. 91, 2, 3. This statute was only temporary, continued by 47 Geo. 3. s. 1. c. 15. for seven years, from August 1807. The 1 G. 1. c. 47. s. 1. is still in force, and subjects a party persuading a soldier to desert to £40 penalty, and he may be sentenced to six months imprisonment, and to stand in the pillory; the prosecution to be commenced within six months. See 16 East,

404. Under this act the venue may be laid in any county, s. 7. The punishment as to pillory is abolished by 56 Geo. 3. c. 138. By the 6 Geo. 4. c. 5. s. 155. persuading or procuring soldiers to desert is punishable with fine or imprisonment, or both, as court shall think fit. This act continues in force until 1st April, 1826.

(b) 6 East, 419, n. (b). See other forms, Stark. 701, 3. 3 East, 157. 3 B. & A. 566.

so then and there taking the same, not to inform or give evidence against any member of a certain society then and there formed to disturb the public peace, for any act or expression of his or theirs done or made collectively or individually, in or out of that or other similar societies, in pursuance of the spirit of that obligation, against the form of the statute, &c. and against the peace, &c.

That the defendants were aiding and assisting at the taking of a certain other oath and engagement then and there taken by the said J. H. and intended to bind the said J. H. so then and there taking the same, not to give evidence against any associate in certain associations and societies of persons formed for seditious purposes, against the form of the statute, &c.

CHAPTER VI.

INDICTMENTS, &c. FOR OFFENCES RELATING TO COIN AND BULLION.

For treason in coining guineas, on 25 Edw. 3. st. 5. s. 2.(a).

MIDDLESEX. The jurors for our lord the king upon their oath present, that C. D. late of, &c. not having the fear of God before his eyes, nor weighing the duty of his allegiance,

(a) See other precedents, Co. Ent. 360. West. tit. Indictment, sect. 142, 3, 4, 5. *As to this offence*, counterfeiting the king's money, or bringing false money into the realm, is declared to be treason, by 25 Ed. 3. st. 5. c. 2. But this extends only to gold and silver money, 1 East P. C. 159. 1 Hale, 211. It extends to gold and silver money made by the king's authority in any part of his dominions, 1 Hawk. c. 17. s. 57. 1 Hale, 188. Same penalty inflicted on persons counterfeiting foreign coin, current here by consent of the sovereign, 1 Mar. s. 2. c. 6; and on persons bringing counterfeit foreign coin, current here, into the realm, 1 & 2 Ph. & Mary, c. 11. s. 2. Treason to counterfeit Irish money, under 25 Ed. 3. 1 East P. C. 150. Clergyable felony to coin foreign gold or silver money, 37 Geo. 3. c. 126. s. 2. The counterfeit must so resemble the coin for which it is intended to pass, as ordinarily to impose on the world, though the resemblance need not be perfect, 1 East P. C. 163, 4. There need not be any impression, 1 Leach, 364. In order to complete the offence, there need not be any attempt to utter, 1 East P. C. 165. Mark-

ing the edges of coin already in currency, is also high treason, by 8 & 9 W. 3. c. 26. s. 3, made perpetual by 7 Ann. c. 25. s. 3. And gilding, washing, or casing, is subject to the same penalties, 15 Geo. 2. c. 28. s. 1, which seem only to be modes of coining. As to the crime of treasonable coining, &c. in general, see 1 Hale, 210 to 230. Hawk. b. 1. c. 17. s. 54 to 91. Bac. Abr. Prerogative, b. 8. Com. Dig. Justices, K. 7. 4 Bla. Com. 88 to 91. 1 East P. C. 158 to 167. Burn, J. Coin. Cro. C. C. 109, &c. *Accessaries.* In treason, all concerned are, in general, principals, 1 Hale, 233. But it has been doubted, whether receivers of coiners are guilty of more than misprision of treason, 1 East P. C. 94, &c.; and, on this doubt, a convict was pardoned, Dyer, 296, a; but it seems they are traitors, 1 East P. C. 95, except where accessaries before, and principals in second degree are expressly included in the terms of the act which creates the treason, when the construction has been, in general, lenient, according to the maxim, *expressum facit cessare tacitum*, 1 East P. C. 96. At all events, the receiver of a traitor cannot be

but being moved and seduced by the instigation of the devil, and contriving and intending our said lord the king and all his people craftily, falsely, deceitfully, feloniously, and traitor-

tried till the original traitor is convicted, 1 Hale, 238; the indictment against him must be special and not general, as in the case of procurers and abettors, 1 Hale, 238. A party who agrees, before the fact, to receive and vend counterfeit coin, is a principal traitor, 1 Hale, 214. *Limitation of Prosecution.* Prosecutions under 8 & 9 W. 3. c. 26, for marking coin, must, by 7 Ann. c. 25. s. 2, be commenced within six months, and for washing, gilding, or colouring, under 15 Geo. 1. c. 28, by s. 5, within six months. But information before justice is a sufficient commencement, 1 East P. C. 186. *Indictment.* The rules laid down as relative to other indictments for treason, except as to overt acts, apply, in general, to treasons relative to the coin. On the statute 8 & 9 W. 3. c. 26. s. 1 & 3, as they contain a special exception in the enacting clause as to persons employed in the mint, it is necessary to insert an averment expressly negating that circumstance, Fost. 430. Where defendants are taken in the act of incomplete coining, an indictment containing one count on 25 Ed. 3. c. 2. and another on 8 & 9 W. 3. c. 26, cannot be supported, 1 Leach, 135. *Evidence.* Two witnesses are not, as in other treasons, necessary to convict, 1 East P. C. 187. 1 Leach, 42. Houses and other suspected places may be searched for tools and base coin, which may be seized, produced in evidence, and afterwards destroyed, 8 & 9 W. 3.

c. 26. s. 5. 11 Geo. 3. c. 40. 37 Geo. 3. c. 126. s. 7. But the defendant is allowed thirty-five peremptory challenges, 1 East P. C. 187. It is not necessary to produce the proclamation to prove the legitimation of the coin imitated. The coin coined must be proved to represent the current coin of the realm, and calculated to deceive persons taking it, 2 Sir W. Bla. 682. The attempt to coin, and coining imperfect pieces, is not within the act, 1 Leach, 161. A slight difference is, however, of no avail for the prisoner, see 1 Hale, 215. 1 Leach, 285. It is not necessary to prove an uttering, 1 Hale, 215. 229. 3 Co. Inst. 16. *Defence.* The defendants are not entitled now to a copy of the indictment, witnesses, and jury, 6 Geo. 3. c. 53. s. 3. 4 Bla. Com. 352, nor to make their full defence by counsel, 7 & 8 W. 3. c. 3. s. 13; but are, in all respects, to be tried as common felons, except that they are allowed thirty-five peremptory challenges, 1 East P. C. 187. *Judgment.* The sentence in treason, relative to the coin, was always to be drawn and hanged, 1 Hale, 351. Women were burnt; but by 30 Geo. 2. c. 48, they also are to be drawn and hanged. No corruption of blood, or loss of dower ensues, Burn, J. Coin. *Rewards.* Party prosecuting to conviction a clipper, &c. of coin, receives £40, 6 & 7 W. 3. c. 17. s. 9; and the same sum for convicting a traitor of washing, gilding, &c. 15 Geo. 2. c. 28. s. 7.

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ously (a) to deceive and defraud, on, &c. with force and arms, at, &c. * twenty pieces of false, feigned, and counterfeit money and coin, of copper, brass, and other mixed metals, of (b) the likeness and similitude of the good, legal, and current money and gold coin of our said lord the king, of this realm, called guineas (c), then and there falsely, deceitfully, feloniously, and traitorously (d) did forge, counterfeit, and coin, against the duty of his allegiance (e), against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in that case made and provided (f).

For treason in
coining a shilling,
on 25 Edw. 3.
st. 5. c. 2, (g).

[Same as first precedent, ante, 104, to the * and then proceed as follows,] one piece of false, feigned and counterfeit money and coin, of pewter, lead, tin and other mixed metals, of (h) the likeness and similitude to the good, legal, and current coin of this realm, called a shilling, then and there falsely and deceitfully, feloniously and traitorously did forge, counterfeit, and coin, against the duty of his allegiance, against the

(a) The word "*traitorously*" is material, 2 Ld. Raym. 870. Comb. 259. 1 East P. C. 115.

(b) 1 Leach, 136. 364. 1 East P. C. 164. The precedents sometimes use the word "to," see Cro. C. C. 109. 1 Leach, 285. Stark. 359. West Entries, tit. Indictment, s. 142, 3, 4, 5, and those referred to in the next precedent, note (h).

(c) Every indictment for coining, clipping, uttering, &c. must show the *kind* of coin in respect whereof the offence is committed; but though it is usual to express the numbers of each kind, it is not necessary to set them forth in the indictment, 2 Hale, 187. Cro. C. C. 39.

(d) *Supra*, note (a).

(e) The indictment should always allege the fact to be done against the duty of the defendant's allegiance, Comb. 259. 1 Lord Raym. 1, 2. 2 Salk. 630. 1 East P. C. 115. The term "*natural*" is never necessary; when defendant is

a foreigner, it is improper, and is always better omitted, 1 East P. C. 115. Cranburn's case, 4 Harg. State Tr. 670. Ante, 64.

(f) 25 Edw. 3. st. 5. c. 2, see ante, 103, note (a).

(g) As to the law, see ante; 103, note (a). See precedents, 1 Leach, 137. 285. 364. Cro. C. C. 109. West Entries, tit. Indictment, s. 142, 3, 4. The law is the same as to counterfeiting silver as gold coin, 1 East P. C. 159. This indictment was held good, though no impression was made on the shillings, but they were made to resemble old coin worn away by time, 1 Leach, 285. A precedent precisely similar was, under similar circumstances, also held good, and the prisoners executed, 1 Leach, 365.

(h) Sometimes the word is "to," 1 Leach, 285. Stark. 359. Cro. C. C. 109. As to this point, see ante, 104, n. (b).

peace of our said lord the king, his crown, and dignity, and against the form of the statute in such case made and provided.

[*Same as ante*, 104, to the *] one piece of money of this realm, called a shilling, falsely, deceitfully, feloniously and traitorously did forge and counterfeit, against the duty, &c. against the peace, &c. and against the form of the statute, &c. [Second count precisely like the preceding.]

The like in another form, on 25 Edw. 3. st. 5. c. 2. (a).

[*Same as preceding*, ante, 104, to the * and then as follows.] did falsely and deceitfully, feloniously and traitorously colour, with a wash and materials producing the colour of silver, one round blank of base metal, of a fit size and figure to be coined into counterfeit milled money, resembling the silver coin of this kingdom, called a sixpence, against the duty of his allegiance, &c. against the peace, &c. and contrary to the statute, &c. [Conclude as ante, 105.]

For treason in colouring base metal like a shilling, on 8 & 9 W. 3. c. 26. s. 4 (b).

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For that he the said C. D. after the 24th day of June, in the said year of our Lord 1777, (c) to wit, on, &c. with force and

For feloniously coining a half-penny, on 11 G. 3. c. 40. (d).

(a) See form, 1 Leach, 136. The first count was said to be new and singular, and will not dispense with the necessity of proving the resemblance of the counterfeit to the current coin, 1 Leach, 136.

(b) This precedent was held sufficient, 1 Leach, 153. 1 East P. C. 166. It was also holden, that the melting a small portion of silver with base metal, and then throwing it into aqua fortis to make the silver rise to the top, so as to give the pieces of metal cut out the appearance of shillings, is a sufficient "colouring with a wash and materials," within the meaning of the statute, 1 East P. C. 166. 1 Leach, 153. In this indictment the language of the act is pursued. There is not any exception in the enacting clause of this section, as in the 1st and 3d, relative to officers of the mint, and

consequently it need not be regatived in the indictment, see ante, 104, n. (a).

(c) The day mentioned in 11 Geo. 3. c. 40. s. 1. which makes the offence felony. It is never absolutely necessary that this should be inserted, though, where the statute is modern, it is usual, but when ancient may always be omitted, 1 Burr. 366. 1 Saund. 309. n. 5. Gilb. L. & E. 242.

(d) See precedents, 1 Leach, 401. Cro. C. A. 122. 125. Cro. C. C. 111. 2 Stark. 530. Old form of indictment for misdemeanor at common law, Trem. P. C. 227. As to the offence of coining copper money. Coining copper money did not exist as an offence under 25 Edw. 3. By 15 Geo. 2. c. 28. it was created a misdemeanor, and punished with two years imprisonment. Counterfeiting halfpence or farthings is made

Second count.

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arms, at, &c. * one piece of copper money of this realm, called a halfpenny, then and there unlawfully and feloniously did make, coin, and counterfeit, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown, and dignity. [*Second count same as first count to the * and then as follows,*] one piece of false, feigned, and counterfeit copper money, of (a) the likeness and similitude of the good, legal, and current copper money of this realm, called a halfpenny, then and there unlawfully and feloniously did make, coin, and counterfeit. [*Conclusion same as first count.*]

On 11 Geo. 3. c. 40, for coining a halfpenny, against the principal and accessory before the fact (b).

[*Statement of the principal offence same as first count of the precedent, ante, 106, and then proceed as follows.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of, &c. before the said felony was committed in form aforesaid, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully and feloniously counsel, aid, abet, and procure the said C. D. to do and commit the said felony in manner and form aforesaid, against the form, &c. and against the peace, &c. *Second count* states the offence of the

felony by 11 Geo. 3. c. 40. but clergy is not thereby taken away. By 27 Geo. 3. c. 126. the provisions of the former statutes were extended to every description of copper coinage. It seems doubtful whether the prosecutor has an option to proceed for the misdemeanor, or whether it is merged in the felony, 1 East P. C. 162. To counterfeit foreign copper money is a misdemeanor, and punishable with six months imprisonment, under 43 Geo. 3. c. 139. s. 3. *Evidence.* By 11 Geo. 3. c. 4. s. 3. any justice, on the oath of one witness, that there is just cause to suspect an individual of coining copper money, may grant a warrant to search for tools and implements, which, if found, may be secured and produced in evidence on the trial. *Judgment.* The punishment for this

offence as a misdemeanor, under 15 Geo. 2. c. 28. is imprisonment for two years. Though made felony by 11 Geo. 3. c. 40. it is within clergy; and *its only punishment on the allowance of that benefit is one year's confinement, which is founded on the general statute 18 Eliz. c. 7. s. 3. 1 East P. C. 162. Counterfeiting foreign copper money is punished with six months' imprisonment, 43 Geo. 3. c. 139. s. 3. See the form of judgment on the allowance of clergy for the single felony, Cro. C. A. 123. 126.

(a) The word "to" inserted in Cro. C. A. 126. Cro. C. A. 111. 1 Leach, 401. 403. ante, 104 a. n. (b).

(b) See precedent, 1 Leach, 401, 403. As to an indictment against an accessory, see ante, page 5.

principal the same as the second count of the precedent, ante, 106, and then states the counselling, aiding, &c. of the accessory, as above.

[*Commencement as ante*, 2.] Feloniously did make, coin, and counterfeit, and cause and procure to be made, coined, and counterfeited, and did willingly act and assist in the making, coining, and counterfeiting one medal, containing on the obverse side thereof an impression of the head of his majesty our said lord the king, and the following words and letters, videlicet, "Georgius III. Dei Gratia Rex," and on the reverse thereof the following words and figures, videlicet, "Bank Token, 3 Shill. 1812," resembling, and made with intent to resemble and look like silver pieces denominated tokens, issued and circulated by the governor and company of the Bank of England, for the convenience of the public, in pursuance of, and by virtue of the statute in that case made and provided, for the sum of three shillings each, against the form of the statute, &c. and against the peace, &c.

For coining bank tokens, under 52 Geo. 3. c. 138 (a).

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(a) See a similar precedent, 2 Stark. 538. *As to the offence.* By 52 Geo. 3. c. 138. the offence of coining is extended to counterfeiting dollars and tokens for 1s. 3d. and 1s. 6d. A single felony, by 2nd section of same act, a person knowingly uttering and tendering in payment a counterfeit token twice within ten days, or uttering one, and having another in his possession, shall be taken for a common utterer of counterfeit dollars, suffer a year's imprisonment, and find sureties, &c. for two years more. On a second conviction, he will be adjudged guilty of felony, and transported for 14 years. By same act (s. 4.) making notes, apparently resembling Bank notes, is made a single felony, punishable with 14 years transportation. Bringing counterfeit tokens into the kingdom, with intent to utter them, felony, 51 Geo. 3. c. 110. s. 2 ; offering to pay them, misdemeanor, and third time, felony, s. 3. Though the 5s. dollars are now circulated for 5s. 6d. that circumstance does not make them so different from those named in the statute, as to exclude them from its provisions, Bagnall's Case, 9th November, 1815, Old Bailey. *Indictment.* Should exactly pursue the wording of the statute, 52 Geo. 3. c. 138. *Judgment.* The offence of counterfeiting a clergyable felony, and punishable by 14 years' transportation. A certificate of the conviction, and allowance of clergy by the clerk of assize, sufficient evidence to oust the offender of clergy in another county, 52 Geo. 3. c. 138. s. 4. *Protection.* Offenders out of prison discovering two others, are protected from prosecution for any former offences of the same kind, id. s. 3.

In a second count the counterfeit is to be described as a "certain *device* (a), resembling, and made with intent to resemble and look like silver pieces denominated tokens, issued and circulated," &c. [*as before*].

For treason in having tools for coining in custody, on 8 & 9 W. 3. c. 26 (b).

Middlesex. The jurors for our lord the king, upon their oath present, that C. D. late of, &c. and E. F. late of, &c. not being persons employed, nor either of them being a person employed in or for the mint or mints of our said lord the king

(a) The other term used in the statute; the words are "*coin, medal, or device.*"

(b) See precedents, 1 Leach, 90, 189. 1 East, P. C. 169, 170, 171. Post. C. L. 430. Cro. C. C. 110, 11. Cro. C. A. 45. Stark. 359, 360, and see indictment for a misdemeanor at common law, R. T. H. 370. 1 Leach, 42, note (a). 1 East, P. C. 172. *As to the offence.* A misdemeanor at common law, R. T. H. 370. 1 Leach, 42, note (a). 1 East, P. C. 172. By 8 & 9 W. 3. c. 26. s. 1. made high treason. By that statute, it is enacted, "that no one, unless lawfully authorized as therein mentioned, shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending, any puncheon, &c. or any other materials whatsoever, in or upon which there shall be or be made or impressed, or which will make or impress the figure, stamp, resemblance, or similitude of both or either of the sides or flats of any gold or silver coin current within this kingdom, nor shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending, of any edger or edging tool, instrument, or engine not of common use in any trade, but contrived for the making (*quære*, 'marking') of money round the edges

with letters, grainings, or other marks or figures resembling those on the edges of money coined in his majesty's mint, nor any press or coinage, nor any cutting engine, for cutting round blanks by force of a screw, out of flatted bars of gold, silver, or other metal; nor shall knowingly buy or sell, hide or conceal, or without lawful authority or sufficient excuse for that purpose, knowingly have in his, her, or their houses, custody or possession, any such puncheon, &c. before mentioned;" offenders and accessaries before, to be guilty of high treason, and suffer death accordingly. By s. 2, conveying out of the mint, or concealing any instrument used for coining, is subjected to the same penalties. It is not enough under this act, to constitute treason, that the instrument should be for marking *one part* of the side of a coin as a sceptre, though it is a misdemeanor, Rep. Temp. Hardw. 376; but knowingly having in possession a puncheon for purpose of coining, is within the statute, though that alone, without the counter puncheon, will not make the figure, &c.; and though the puncheon had not the letters yet sufficiently described in the indictment as a "puncheon, which would impress the resemblance, &c. of the head

in the Tower of London or elsewhere, and for the use and service of the said mints only, and not being persons lawfully authorized, nor either of them being lawfully authorized by the lords commissioners of the treasury, or lord high treasurer of England for the time being (a), and not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, after the 15th day of May, A. D. 1697 (b); to wit, on, &c. with force and arms *, at, &c. one pair of moulds (c), made of chalk, in and upon which said moulds then and there were made and impressed (d) the figure, resemblance, and similitude of one of the sides of the lawful silver coin of this kingdom, called sixpences (each of which said moulds would then and there make and impress the figure, resemblance,

side of a shilling," 1 Leach, 169. A mould is an instrument within the statute, and is sufficiently described as such without laying it to be a tool or instrument, 1 Leach, 90. Evidence of the mould being a tool on which the resemblance of the coin was inverted, will support the allegation that "*it was a mould on which was made and impressed the figure, &c.*" though it would have been more proper to have called it a *mould that would make*, &c. id. ib. Degree of similitude governed by same rules as counterfeiting coin, ante, 104, n. (a). 1 East, P. C. 170. Coining press, a "tool or instrument" within the act, 1 East, P. C. 169. Tool to counterfeit foreign coin within the act. sed quære, Fost. 430. pref. viii. *Limitation of Prosecution*. The prosecution for some of the offences must be commenced within six months, 7 Ann. c. 25. s. 2. *Indictment*. Must follow the words of the statute. See notes (a) &c. *infra*. *Evidence*. Tools, counterfeit money, &c. may be seized by any one, and produced in evidence against the defendant,

8 & 9 W. 3. c. 26. s. 5. As to the evidence, Foster, 430.—*Defence*, &c. The defence, judgment, &c. are regulated by the same rules, as in case of other treasons relating to coin, ante, 104, n. (a); no corruption of blood or loss of dower follows attainder, 8 & 9 W. 3. c. 26. s. 7.

(a) It is absolutely necessary to negative this exception thus, as it is contained in the enacting clause of the statute, 1 East, P. C. 167, 169. 1 Leach, 90, 189. Foster's C. L. Pref. 3rd ed. viii. 1 Burr. 154.

(b) As to the insertion of the day, see ante, 106, note (c), *et infra*.

(c) As to the sufficiency of this description, see ante, 108, note (b). 1 Leach, 90.

(d) This precedent, in the same count, avers that the mould was impressed with the figure, &c. and that it would impress such figure. It should seem to be advisable to insert two counts; one averring that the mould *was impressed*, &c. and another that it *would make and impress the similitude*, &c. see 1 Leach, 92, 139. Cro. C. C. 111, post, 110.

and similitude of one of the sides of the lawful silver coin of this kingdom called sixpences), without any lawful authority or sufficient excuse for that purpose, knowingly (a) and traitorously had in the custody and possession of them the said C. D. and E. F. in the dwelling-house of the said I. K. situate at, &c. against the duty of their allegiance, against the peace, &c. and also against the form, &c.

For treason in hiding and concealing coining tools, on 8 & 9 W. 3. c. 26. (b).

[As in the last indictment, to the asterisk, page 109, and then proceed,] knowingly and traitorously in the dwelling-house of E. F. situate at, &c. aforesaid, did hide and conceal, against the duty of their allegiance, against the peace, &c. and also against the form of the statute, &c.

For treason against two persons for having a dye in their custody, for the purpose of coining shillings, on 8 & 9 W. 3. c. 26 (c).

[Same as the precedent ante, 109, to the asterisk, and then proceed as follows,] one dye made of iron and steel, in and upon which then and there were made and impressed the figure, resemblance, and similitude of one of the sides, to wit, the head side of the lawful silver coin current within this kingdom, called a shilling, without any lawful authority or sufficient excuse for that purpose, then and there knowingly, feloniously and traitorously had in the custody and possession of them the said C. D. and E. F. against the duty, &c. against the peace, &c. and against the form, &c. [Second count same as ante, 109, to the asterisk, and then proceed as follows,] one dye made of iron and steel, which said dye would then and there make and impress (d) the figure, resemblance, and similitude of one of the sides, to wit, the head side of the lawful silver coin current within this kingdom, called a shilling, without any lawful authority or sufficient excuse for that purpose, then and there knowingly, feloniously and traitorously had in the custody and possession of them the said C. D. and E. F. against the duty, &c. against the peace, &c. and against the form, &c.

Second count.

(a) This is the term used in the statute. It is at all times a sufficient averment of knowledge, 2 Stra. 904.

(b) See precedent, Cro. C. 110. Stark. 360, and notes to last precedent.

(c) See precedents, 1 Leach, 90. Cro. C. C. 111. Cro. C. A. 45.

(d) This count is framed agreeably to the decision, 1 Leach, 90, 92.

[*Commencement as ante*, 2.] Thirty pieces of gold called guineas, and three hundred pieces of silver called sixpences, of the proper monies and coins of this realm, for wicked lucre and gain's sake (*b*) falsely, feloniously and traitorously clipped and filed, so that by means of the clipping and filing aforesaid, every one of the said pieces of gold were greatly diminished in the weight of which they ought by law to have been, and thereby became and were greatly lessened in value, to wit, to the amount of two shillings each, and the said pieces of silver were also thereby then and there greatly diminished in the weight of which they ought by law to have been, and thereby became and were greatly lessened in value, to wit, to the amount of one penny each, and the same monies so clipped and filed as aforesaid, the said C. D. on, &c. aforesaid, at, &c. aforesaid, falsely, feloniously and traitorously did expose and utter, contrary to the duty, &c. contrary to the form, &c. (*c*) and against the peace, &c.

For treason in clipping and rounding monies, and afterwards uttering them, on 5 Eliz. c. 11 (*a*).

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[*Commencement as ante*, 2.] On, &c. with force and arms, at, &c. ten pieces of false and counterfeit milled money and coin, each and every of them made and counterfeited to the

For felony on 8 & 9 W. 3. c. 26, s. 6., for putting off counterfeit shillings and sixpences for less than nominal value (*d*).

(*a*) See precedent, West. Indictment, sect. 258. 1 Leach, 42. 1 East P. C. 174. *As to the offence*. The 5 Eliz. c. 11. enacts "that clipping, washing, rounding, or filing, for wicked lucre or gain's sake, any of the proper monies or coins of this realm, or the dominions thereof, or of the monies or coins of any other realm allowed and suffered to be current within this realm or the dominions thereof, or that hereafter at any time shall be lawful monies or coins of this realm or of the dominions thereof, or of any other realm, and by proclamation allowed to be current here, shall be adjudged high treason; and the offenders, their counsellors, consenters, and aiders, traitors, being thereof lawfully convicted or attainted." By 18 Eliz. c. 1. this provision was

extended to "impairing, diminishing, falsifying, scaling, and lightening." Impairing Irish coin, though not mentioned, is evidently within these provisions, 1 East P. C. 174. Loss of dower and corruption of blood saved, 5 Eliz. c. 11. s. 4. and 18 Eliz. c. 1. s. 2.

(*b*) This must be laid in the indictment and proved in evidence, or the defendant will not be convicted, 2 Hale, 189, 190. 1 East P. C. 174. Cro. C. C. 39.

(*c*) The indictment must so conclude, because the statute was in some respects introductory of a new law, 1 East P. C. 174. 1 Hale, 220. Cro. C. C. 39.

(*d*) See precedents, 2 Leach, 621. 4 Wentw. 55. Stark. 531. *As to the offence*. By 8 & 9 W. 3. c. 26. s. 6, made perpetual by 7 Ann. c. 25. s. 3. to "take,

likeness and similitude of a piece of good, legal, and current milled (a) money and silver coin of this realm, called a shilling, and thirty-three pieces of false and counterfeit milled money and coin, each and every of them made and counterfeited to the likeness and similitude of good, legal, and current milled money and silver coin of this realm, called a sixpence, the same counterfeit pieces of milled money, nor either of them not being then cut in pieces (b), then and there unlawfully and feloniously did put off to one G. H. yeoman, and one I. K. labourer (c), at a lower rate and value than the same counterfeited pieces of milled money did, by their deno-

receive, pay, or put off any counterfeit milled money, or any milled money whatsoever, unlawfully diminished and not cut in pieces, *at or for a lower rate or value than the same by its denomination, imports or was coined or counterfeited for*" is felony. This act is confined to gold and silver, 1 East, P. C. 179. The statute 11 Geo. 3. c. 40. s. 2, provides for other money. There must be an actual putting off, and not a mere attempt to utter, which is provided for otherwise, 1 Leach, 307. 1 East, P. C. 179. It must not merely be vended but at a lower rate than it imports, 1 East, P. C. 180. All current money now is "milled money," and not, as formerly, hammered; this description, therefore, applies to all current gold and silver coin, 2 Leach, 621. 1 East, P. C. 180. The uttering counterfeit money, not at a lower rate than its nominal value, is provided for by 15 Geo. 2. c. 28, see post, 112. *Limitation of Prosecution.* All prosecutions under this act must be commenced within three months after offence committed, s. 9. 1 East, P. C. 168. *Indictment.* (See notes, post, on precedent.) *Evidence.* Evidence

of more than one uttering in a day, may be given in evidence to show that the act was knowingly done, though but one uttering be laid in the indictment, 1 New Rep. 95. *Judgment.* The punishment on allowance of clergy, was burning in the hand, and imprisonment not exceeding a year, before the abolition of the former punishment. At the present day, the same with other clergyable felonies, Ante, vol. i.

(a) It need not be proved that the money was *milled*, 2 Leach, 621. 1 East, P. C. 180, 181. If the indictment be for putting off diminished money at a lower rate, it must be averred that it was *unlawfully* diminished, 5 T. R. 217, n. a. 1 East, P. C. 180.

(b) It is absolutely necessary to insert this allegation, and its omission will be fatal, 1 Leach, 102. 1 East, P. C. 183.

(c) The names of the persons to whom the money was put off, if they can be ascertained, ought to be inserted and laid severally; though, if unknown, this allegation will be governed by the same rules as stealing the goods of a person unknown, 1 East, P. C. 180. Ante, vol. i. 212.

mination, import and were counterfeited for (a), that is to say, for one piece of current gold coin of this realm, called a half-guinea, being of the value of ten shillings and sixpence, against the form, &c. and against the peace, &c.—[*It is usual to add a second count, stating and uttering only to G. H. and a third for uttering only to I. K.* 1 East, P. C. 180.]

[*Commencement as ante*, 2.] That C. D. on, &c. with force and arms, &c. at, &c. one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm, called a

For a misdemeanor in uttering a counterfeit shilling, on 15 Geo. 2. c. 28. s. 2 (b).

(a) This must be laid and proved, 1 East, C. P. 180. If the money be *diminished*, it must be laid to be unlawfully so, or the indictment cannot be supported, 5 T. R. 217, n. a. 1 East, P. C. 180.

(b) See other precedents, 2 Leach, 645. 833. 858. Stark. 536. *As to the offence*. The 3 & 9 W. 3, only referring to uttering for a less sum than the denomination imports, it is provided by 15 Geo. 2. c. 28. s. 2, that “if any person shall utter or tender in payment any false or counterfeit money, knowing the same to be so, he shall suffer six months imprisonment, and find sureties for good behaviour for six months further; and, on conviction for a second offence, shall suffer two years’ imprisonment, and find sureties for two years more; and, on conviction for a third offence, shall be adjudged guilty of felony without benefit of clergy, s. 2. And by sect. 3, if any person shall utter or tender in payment, any false or counterfeit money, knowing the same to be so, and shall, either the same day, or within ten days then next, utter or tender in pay-

ment any more, or other false or counterfeit money, knowing the same to be so; or shall, at the time of such uttering or tendering, have about him in his custody, one or more pieces of counterfeit money, besides what was so uttered or tendered, he shall be deemed and taken to be a common utterer of false money; and shall suffer a year’s imprisonment, and find sureties for his good behaviour for two years more; and, for a second offence, he shall be adjudged guilty of felony without benefit of clergy. By the 3 Geo. 4. c. 114. the prisoner may be sentenced to hard labour. These acts extend only to gold and silver, 2 Leach, 834, note (a). 1 East P. C. 182. and see 1 Hale, 211. The tendering or uttering foreign counterfeit coin is now made subject to nearly the same regulations, 37 Geo. 3. c. 126. s. 4. *Limitation of Prosecution*. All prosecutions under 15 Geo. 2. c. 28. must be commenced within six months, s. 5. information before magistrate is commencement of prosecution within meaning of this statute, 1 East P. C. 186, 7. *Indictment*. If

shilling (a), unlawfully, unjustly, and deceitfully, did utter to one A. B.; he the said C. D. at the time when he so uttered the said piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, against the form of the statute, &c. and against the peace, &c. [*another count was added for uttering another false and counterfeit shilling within ten days; if there were several utterings on the same day to different persons, the different utterings may be separately stated, as above, see form, 2 Leach, 858. Stark. 536.*]

For a misdemeanor in uttering counterfeit shillings twice or more within ten days, under 15 Geo. 2. c. 28. s. 3 (b).

[*The same precisely as the precedent, ante, 112, 113, to the asterisk, and then proceed as follows:*] And that he the

two utterings be charged on the same day, each in a different count, there cannot be judgment against the defendant on the 3d section of 15 Geo. 2. c. 28. as for two distinct acts, without a precise averment of the fact, 2 Leach, 833. 856. 858. 1 East P. C. 182, 183. 3 Esp. Rep. 28. But for this purpose it is not necessary to aver that the defendant was a common utterer in the language of the statute, that being a conclusion of law from the facts stated, 2 Leach, 858. 1 East, P. C. 183, 4. 2 B. & P. 127, and it is sufficient to state that the second uttering was *on the said, &c.* without averring in the words of the act that the second uttering was "on the same day," 2 Leach, 923. 1 East, Add. XVIII.—*Evidence.* Offenders are to be convicted by such like evidence, and in such manner as counterfeiters of the coin, 15 Geo. 2. c. 28. s. 5. see ante, 104, n. (a). Justices may grant warrants to search suspected places for foreign counterfeit coin, 37 Geo. 3. c. 126. s. 7. Any person out of prison discovering two persons guilty, under 15 Geo. 2. c. 28. will be entitled to a pardon, s. 8. Proof

of more than one uttering in a day may be offered to show that the act was knowingly done, though but one uttering be laid in the indictment, 1 New Rep. 95. As to the punishment, we have above pointed it out, as prescribed by 15 Geo. 2. c. 28. ss. 2. 3. 3 Geo. 4. c. 114.

(a) This will suffice without averring a tender in payment, and in an indictment for uttering bad money by the common trick of ringing the changes, this averment should be omitted; and the indictment will be good without alleging that the defendant uttered the money in payment, or as and for good money, because the words of the act are in the disjunctive "utter" or "tender in payment," 2 Leach, 644.

(b) See the act, ante, 112 a, n. (b). See precedent, 2 Leach, 923. 1 East, Add. XVIII. Stark. 536. In some precedents the statement of the first uttering does not conclude "against the statute, &c." See 2 Leach, 858. 923. 939. 1 East P. C. Add. XVIII. Stark. 536. but *semble*, that it should so conclude; and it should seem, that to bring the offence within the 3d section of the 15 Geo. 2. c. 28. s. 1. it should be ex-

said C. D. on the same first day of January, in the fifty-sixth year aforesaid, with force and arms, at, &c. aforesaid, one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm, called a shilling, unlawfully, unjustly, and deceitfully did utter to one E. F., he the said C. D. at the time when he so uttered the said last-mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, against the form of the statute, &c. and against the peace, &c. And that the said C. D. on the same, &c. with force and arms, at, &c. aforesaid, one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, and deceitfully did utter to one G. H., he the said C. D. at the time when he so uttered the said last-mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, against the form, &c. and against the peace, &c.

Third uttering.

[*Same precisely as the indictment, ante, 112, 113, to the asterisk, and then proceed as follows.*] And that he the said C. D. at the time when he so uttered the said piece of false and counterfeit money as aforesaid, to wit, on the said, &c. at, &c. had about him the said C. D. in the custody and pos-

For a misdemeanor, on 15 Geo. 2. c. 28. s. 3, for uttering a counterfeit half-crown, having another in possession (a).

pressly averred that the defendants uttered on the *same day*, or within ten days afterwards, 2 Leach, 835; but the statement that the defendant made the second uttering "*on the said, &c.*" will suffice, 2 Leach, 923, but the allegation "*afterwards, to wit*" had better be omitted. The several utterings must be charged in the same count, and not in different counts, or the judgment can only be given for six months' imprisonment, 2 Leach,

833. 1 East P. C. 182, 3, but it is not necessary to aver that defendant was a common utterer, 2 Leach, 333, ante, 113, n. (a).

(a) See forms, 2 Leach, 858, 939. 1 East P. C. 183. 2 B. & P. 127. Stark. 557. These forms do not conclude the statement of the first uttering "against the form of the statute, &c.;" but *quere* if that conclusion is not proper, ante, 113, note (b).

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session of him the said C. D. one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm called an half-crown, he the said C. D. then and there well knowing the said last-mentioned piece of false and counterfeit money to be false and counterfeit, in contempt, &c. and against the form of the statute, &c. and against the peace, &c.

For felony in uttering a counterfeit shilling, having before been convicted as a common utterer, on same day, of several counterfeit shillings, on 15 Geo. 2. c. 28. s. 3. (a).

That heretofore, to wit, at the assizes and general session of our sovereign lord the king of oyer and terminer, and general gaol delivery, held (b) at the Guildhall of Reading, in and for the county of Berks, on Tuesday, the twenty-sixth day of March, in the forty-fifth year of the reign of our sovereign lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland king, defender of the Faith, before his majesty's well beloved and faithful counsellor, Edward, lord Ellenborough, chief justice of our said sovereign lord the king of his majesty's court of King's Bench at Westminster, and his majesty's trusty and well beloved Sir Robert Graham, knt. one of the barons of our said sovereign lord the king, of his majesty's court of Exchequer, at Westminster, and others their companions, justices and commissioners of our said sovereign lord the king, by virtue of letters patent of our said sovereign lord the king, A. B. by the name and description of A. B. late of the parish of Tilehurst in the county of Berks, labourer, was in due form of law tried and convicted by a certain jury of the country duly taken and sworn, between our said lord the king and the said A. B. in that behalf upon a certain indictment then and there depending against him the said A. B., for that the said A. B. on, &c. with force and arms, at, &c. [*Here set out the indictment verbatim as ante, 113, 114, and then proceed as follows.*] And thereupon it was considered by the court there, that the said A. B. should be imprisoned in his majesty's gaol in the county of Berks aforesaid, for and during the term of twelve months (c), and that at the expiration of

(a) See other precedents, 2 Leach, 939. 1 East P.C. Add. XIX. Stark. 560. and a defective form, 2 Leach, 856, 7.

(b) This is taken from the

record of former conviction.

(c) The sentence under the 3d section of 15 Geo. 2. c. 28. for several utterings on same day.

that time, he should find sureties for his good behaviour for two years, as by the record thereof doth more fully appear. And the jurors aforesaid, now here sworn and charged to inquire for our said lord the king for the body of the said county of Berks, upon their oath aforesaid, do further present, that the said A. B. *having been so convicted as a common utterer of false money*, afterwards, to wit, on, &c. with force and arms, at, &c. one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, deceitfully, and feloniously did utter to one E. F. labourer, he the said A. B. at the time when he so uttered the said last-mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, against the form, &c. and against the peace, &c. *Second count*, And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, &c. [*the former conviction is here set out again as in the first count.*] And the jurors aforesaid, now here sworn and charged to inquire for our said lord the king, for the body of the said county of Berks, upon their oath aforesaid, do further present, *that the said A. B. having been so convicted as aforesaid*, afterwards, to wit, &c. [*as in the first count, omitting the words "having been convicted as a common utterer of false money."*]

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[*Commencement as ante, 2.*] Being an evil-disposed person, on, &c. at, &c. did unlawfully and deceitfully, with intent to defraud one A. B. utter and expose, and cause and procure to be uttered and exposed, to the said A. B. nine pieces of gold, for, and as good and true guineas of the proper money of this realm, notwithstanding none of the said nine pieces of gold, at the said time when they were so uttered and exposed, and caused and procured to be uttered and exposed, were good and true guineas of the proper money of this realm, but each of them had been unlawfully filed, and by such filing diminished, and rendered defective of their weight, which before such filing they had, being before such filing good and true guineas of the proper money of this realm; he, the said C. D. at the time he

For a misdemeanor at common law, in causing guineas filed and diminished to be uttered as good guineas (a).

(a) See precedent, Cro. C. C. 7th edit. 317.

so uttered and exposed, and caused and procured to be uttered and exposed, the said nine pieces of gold as aforesaid, then and there well knowing that none of them were good and true guineas, but that each of them had been so as aforesaid filed, diminished, and rendered defective of their weight, to the evil example, &c. and against the peace, &c.

For a misdemeanor at common law for uttering a counterfeit half guinea (a).

[Commencement as ante, 2.] Being evil-disposed persons, on, &c. one piece of false money, made of base metals, and coloured with a certain wash, producing the colour of gold, to the likeness and similitude of a piece of good, lawful, and current gold money and coin of this realm, called an half guinea, unlawfully, unjustly, and deceitfully did utter and pay to one A.B. for and as a piece of good and lawful gold money and coin of this realm, called an half guinea, he the said C.D. then and there well knowing the said piece to have been false and counterfeit as aforesaid, to the great damage of the said A. B. to the evil example, &c. and against the peace, &c.

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For a misdemeanor at common law for uttering a counterfeit sixpence, and having another found in his custody (b).

That C. D. late of, &c. being an evil-disposed person, on, &c. at, &c. one piece of false money, made of certain mixed base metals, counterfeited to the likeness and similitude of a piece of good, lawful, and current money and coin of this realm, called a sixpence, unlawfully, unjustly, and deceitfully did utter and pay to one A. B. for, and as a piece of good and lawful money and coin of this realm, called a sixpence, (he the said C. D. then and there well knowing the said piece to have been false and counterfeit, as aforesaid,) to the great damage of the said A.B. and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D. on the said, &c. at, &c. aforesaid, unlawfully had in the custody and possession of him the said C. D. one other piece of false money made of mixed base metals, counterfeited to

Second count, for having counterfeit money in his possession with intent to utter it.

(a) See precedent, Cro. C.C. 7th edit. 315. Stark. 466.

(b) See the precedents, Cro. C.C. 7th edit. 315. Since the statute 15 Geo. 2. c. 28. s. 2, it is more frequent to prosecute upon it, see Cro. C.C. 7th edit. 316, n. a. It should seem, from the recital in this statute,

to be a misdemeanor at common law, and where there is no uttering but merely a possession of money with intent to utter, the last count may be advisable, see other precedents, 1 Leach. 41, 42, note a. Cro. C.C. 7th ed. 315. 4 Bla. Com. 100, in notes.

the likeness and similitude of a piece of good, lawful, and current money and coin of this realm, called a sixpence, (he the said C. D. then and there well knowing the said last-mentioned piece to have been false and counterfeit as aforesaid,) with an intent to utter and pay the said last-mentioned piece of false and counterfeit money to one of the subjects of our said lord the king, in contempt of our said lord the king and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

That C. D. late of, &c. to wit, on, &c. with force and arms, at, &c. 333 pieces of false and counterfeit copper money, each and every of them made and counterfeited to the likeness and similitude of the good, legal, and current money, and copper coin of this realm, called an halfpenny, the same counterfeited pieces of copper money not being then melted down or cut in pieces(b), then and there unlawfully and feloniously did sell, pay, and put off to one A. B. at a lower rate and value than the same counterfeited pieces of copper money did, by their denomination, import and were counterfeited for, that is to say, for one piece of current gold coin of this realm, called an half guinea, being of the value of ten shillings and sixpence, against the form, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D. to wit, on the said, &c. with force and arms, at, &c. aforesaid, 333 pieces of false and counterfeit copper money and coin, each and every of them made and counterfeited to the likeness and similitude of a piece of good,

For felony in putting off false copper at a lower rate than by its denomination it imported, on 11 Geo. 3. c. 40. s. 2. (a).

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Second count (c).

(a) See other precedents, Cro. C. C. 112. Cro. C. A. 130. Stark. 530; and for coining copper money, ante, 106. As to the offence. It was not indictable at common law, nor included in the statutes relative to uttering gold and silver money. 2 Leach, 834, n. a. 1 East, P. C. 182. Created by 11 Geo. 3. c. 40. s. 2, which enacts, that to sell, pay, or put off any counterfeit copper money not melted down or cut in pieces, at or for a lower rate

or value than the same, by its denomination doth import, or was counterfeited for, shall be felony, but clergyable. For rules as to indictment, &c. see the notes to the preceding precedents.

(b) As to the necessity of this allegation, see *supra*, note (a). 1 Leach, 102.

(c) Same as the first, except saying "copper money and coin," and "at the rate of 333 of such pieces," &c.

lawful, and current money, and copper coin of this realm, called an halfpenny, the same counterfeited pieces of copper money not being then melted down or cut in pieces, then and there unlawfully and feloniously did sell, pay, and put off to one A. B. at the rate of 333 of such pieces of counterfeit copper money, for one piece of current gold money and coin of this realm, called an half-guinea, being of the value of ten shillings and sixpence, being a lower rate and value than the same counterfeited pieces of copper money did, by their denomination, import, and were counterfeited for, against the form, &c. and against the peace, &c.

For a misdemeanor in buying guineas, on 52 G. 3. c. 50. (a).

[*Commencement as ante, 2.*] Unlawfully did pay to one A. B. for five pieces of gold coin, lawfully current within this realm, called guineas, by their denomination importing to be of the value of five pounds and five shillings, more in value, benefit, profit, and advantage, than the true, lawful value, which such pieces of gold coin, by their denomination, imported to be of, to wit, one piece of silver coin, of lawful money of Great Britain, called a shilling, of the value of one shilling, 22 pieces of silver coin called Spanish dollars, of the value of 5s. 6d. each, one piece of silver coin called a Spanish half dollar, of the value of 2s. 6d. and one piece of silver called an American half dollar, of the value of 2s. 6d. against the form of the statute, &c. and against the peace, &c.

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[*Commencement of second count, as ante, 3.*] Unlawfully did pay to the said A. B. for five other pieces of gold coin, lawfully current within this realm, called guineas, by their denomination importing to be of the value of 5l. 5s. more in value, benefit, profit, and advantage, than the true lawful value which such last-mentioned five pieces of gold coin by their denomination imported to be of, to wit, one pound and two shillings more in value, benefit, profit, and advantage, than the true lawful value of such last-mentioned five pieces of gold coin, that is to say, he the said C. D. did then and there pay for the said last-mentioned five pieces of gold coin, to the said A. B. one other piece of silver coin of lawful money, &c. [*as in first count.*]

[*Commencement of third count, as ante, 3.*] Unlawfully did pay to the said A. B. for five other pieces of gold coin, lawfully current within this realm, called guineas, by their denomination importing to be of the value of 5*l.* 5*s.* one other piece of silver coin of lawful money of Great Britain, called a shilling, of the value of one shilling, twenty-two other pieces of silver coin called Spanish dollars, of the value of 5*s.* 6*d.* each, one other piece of silver coin, called a Spanish half dollar, of the value of 2*s.* 6*d.* and one other piece of silver coin, called an American half dollar, of the value of 2*s.* 6*d.* being more in value, benefit, profit, and advantage, to wit, to the amount of 1*l.* 2*s.* more in value, benefit, profit, and advantage, than the true lawful value which such last-mentioned five pieces of gold coin, called guineas, by their denomination imported to be of, against the form of the statute, &c. and against the peace, &c.

[*Commencement of fourth count, as ante, 3.*] Unlawfully did pay to the said R. R. for five pieces of gold coin, lawfully current within this realm, called guineas, by their denomination importing to be of the value of 5*l.* 5*s.* more in value, benefit, profit, and advantage, than the true lawful value which such last-mentioned five pieces of gold coin, called guineas, imported to be of, that is to say, 1*l.* 2*s.* more in value, benefit, profit, and advantage, than the true value of such last-mentioned pieces of gold coin, the said last-mentioned value, benefit, profit, and advantage, then and there being paid partly in a certain piece of lawful silver money of Great Britain, and partly in certain foreign silver coin, against the form, &c. and against the peace, &c.

That C. D. late of, &c. being an evil-disposed person, and devising and intending one A. B. unjustly and injuriously to deceive and defraud, on, &c. at, &c. aforesaid, sixteen pieces of false coin (amounting together to the value of seventeen shillings and fourpence, of lawful money of Great Britain, and no more), counterfeited to the likeness and similitude of a certain foreign coin made of silver, with an alloy of copper and other base metals, called Dutch guilders, unlawfully, fraudulently, and deceitfully did utter and sell to the said A. B. for the sum of twenty-six shillings and eight pence, of lawful

For a misdemeanor at common law, in selling counterfeit Dutch guilders for good and true guilders (a).

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money of Great Britain, for and as good and true pieces of foreign coin, called Dutch guilders, each guilder of the value of twenty pence of lawful money of Great Britain, he the said C. D. then and there well knowing the said pieces of coin so as aforesaid by him uttered and sold, to have been false and counterfeit, to the great damage and deceit of him the said A. B. and against the peace of our said lord the king, his crown and dignity.

Importing counterfeit or light coins.

By 25 Edw. 3. st. 5. c. 2. importing counterfeit money into the realm, intending to resemble English money, knowing the same to be false, with intent to utter it, is declared high treason. The 1 & 2 Ph. & M. c. 11, makes it the same offence to counterfeit foreign gold and silver coin current here, by proclamation, see precedent, West, tit. Indictments, sec. 316. The 14 Geo. 3. c. 42, prohibits the importation of light silver coin from foreign parts, on pain of confiscation; and 37 Geo. 3. c. 126, which revives the last act, makes it a clergyable felony to import counterfeit foreign coin *not* current here, with intent to utter it, and punishes it with transportation for a term not exceeding seven years. It has been said, that the importer under the acts which make the offence treason, must utter it; but probably the intent manifested in other ways, would suffice. 3 Inst. 18. 1 East, P.C. 175, at all events an *intent* must be both laid in the indictment, and proved; 1 East, P.C. 176. As to the constructions of these statutes, see 1 East, P.C. 174 to 178.

Sending counterfeit coin out of the kingdom.

Exporting counterfeit coin, whether copper or gold and silver, for the purpose of its being imported into the British colonies of America or the West Indies, by 38 Geo. 3. c. 67. s. 1, subjects the coin to forfeiture, and the party offending is liable to forfeit 200*l.* and double the value of the coin in question. But genuine gold or silver coin may be exported from hence to Ireland, since 10 Geo. 3. c. 18. See a precedent of an information for exporting, Vet. Ent. 227.

Offences relating to bullion.

The statutes which regulate the standard of bullion, are 28 Edw. 1. st. 3. c. 20. 17 Edw. 4. c. 1. 4 H. 7. c. 2. 18 Eliz. c. 15. 8 W. 3. c. 8. 6 Geo. 1. c. 11. s. 41. 12 Geo. 2. c. 26. 24 Geo. 3. c. 53. 30 Geo. 3. c. 31. 38 Geo. 3. c. 69. To counterfeit bullion is made a capital felony, 8 & 9 W. 3. c. 26. s. 6; but corruption of blood and loss of dower are expressly

saved in the statute, s. 7; and the prosecution must be commenced within three months after the offence committed, s. 9. To export bullion, in imitation of Spanish ingots of silver, is prohibited under penalty of 500*l.* to be sued for *qui tam*, 6 & 7 W. 3. c. 17. s. 3. Molten silver, without stamp, and affidavit that it was never current money of this realm, nor clippings thereof, nor plate wrought within this kingdom, may be seized by any custom-house officer, Id. s. 5, 6. And to export any bullion or molten silver without a certificate first obtained from the lord mayor and aldermen of London, and oath having been made by the owners and two witnesses, that the same was and is foreign bullion, and that no part thereof was the coin of this realm, or clippings thereof, nor plate wrought within this kingdom; and the same having been circumstantially certified to the commissioners of customs, before any cocket granted for shipping the same, subjects the owner to the loss of the bullion, and double their value; the captain to the forfeiture of 200*l.* and if in the king's service, loss of command, and the cocket officer to penalty of 200*l.* and incapacity to hold any office, 7 & 8 W. 3. c. 19. s. 6. *Buying or selling* bullion by any brokers not being trading goldsmiths or refiners of silver, subjects to six months imprisonment without bail, 6 & 7 W. 3. c. 17. s. 7. Having bullion in possession under peculiar circumstances of suspicion, compels the party to prove it to be lawful bullion, on pain of six months imprisonment, without bail, 6 & 7 W. 3. c. 17. s. 8. For a more full statement of these acts, see 1 East, P. C. 188 to 198.

CHAPTER VII.

INDICTMENTS, &c. FOR OFFENCES AGAINST THE REVENUE.

Indictment for felony, on 52 G. 3. c. 143. s. 11, in assembling, in order to be aiding in rescuing smuggled goods from an excise officer (a).

[*Commencement of indictment, as ante, 2.*] That C. D. late of, &c. E. F. late of, &c. I. K. late of, &c. and divers other persons to the number of three persons and more, whose names are as yet unknown to the said jurors, after the twenty-third day of July, which was in the year of our Lord one thousand eight hundred and twelve, within Great Britain, (*according to the fact, see the act*) to wit, on, &c. with force

(a) The 52 Geo. 3. c. 143. s. 11. See other precedents, on 19 Geo. 2. c. 34. Cro. C. C. 448. 1 Leach, 339, where counts are joined for assaulting and obstructing generally. See the statutes on offences of this kind, in general, set forth in Williams, J. Smuggling, IV. Com. Dig. Justices, S. 22. Bac. Abr. tit. Smuggling. See precedents for various pecuniary penalties relative to offences against the excise and customs, 4 Wentw. 379, 380, 81, 82, 84. 388. 405. 584. *As to this offence.* The 52 Geo. 3. c. 143. s. 11. (which amends and reduces into one act the prior acts, imposing the penalty of death for resisting the revenue laws) provides, that if any persons to the number of three or more armed with fire arms, or other offensive weapons, within Great Britain, or within the limits of any port, harbour, or creek thereof, or within the Isle of Man, or within the limits of any port, harbour, or creek thereof, shall be assembled, in order to be aiding and assisting in the illegal exportation of

wool or other goods prohibited to be exported, or the carrying of wool, or other such goods, in order to such exportation, or in the running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay any duties which have not been paid or secured, or in the illegal re-landing of any goods whatsoever, which have been shipped or exported upon debenture or certificate; or from any warehouse wherein such wool or other goods shall have been deposited under any act of parliament for the securing the home consumption duties thereon; or in rescuing or taking away the same after seizure from any officer or officers of the customs or excise, or other his majesty's revenue, or other person or persons employed by him or them, or assisting him or them, or from the place where they shall be lodged by him or them; or in rescuing any person who shall be apprehended for any of the offences made felony by this or any other act relating to the revenues of customs or excise,

and arms, at, &c. being then and there armed with fire arms and other offensive weapons, to wit, with guns, pistols, car-

or in preventing the apprehending any person who shall be guilty of any such offence; or in case any persons to the number of three or more so armed as aforesaid shall be so aiding or assisting; or if any person shall maliciously shoot at or upon any ship, vessel, or boat, belonging to his majesty's navy, or in the service of the customs or excise; or if any person shall maliciously shoot at, maim, or dangerously wound any officer of his majesty's military or naval forces, or of the customs or excise, or any other person aiding any such officer when acting in the due execution of his duty; every person so offending, and every person so aiding, abetting, or assisting therein, shall be guilty of felony, and suffer death without benefit of clergy; and by the same section any of the above offences committed in any port of Guernsey, Jersey, Sark, or Man, shall be tried there; if out of the United Kingdom, then in the United Kingdom; if within England, Scotland, or Ireland, in any county of that part of the United Kingdom. By 19 G. 2. c. 34. s. 3. (which does not seem repealed by the 52 G. 3. c. 143, and was, after being continued by various acts, viz. 26 G. 2. c. 32. 32 G. 2. c. 10. 4 G. 3. c. 12. 11 G. 3. c. 51. 19 G. 3. c. 69. 28 G. 3. c. 23. 36 G. 3. c. 40. s. 13. made perpetual by the 43 G. 3. c. 157.) persons receiving the felon after the time appointed for the surrender, are made felons and liable to be transported for seven years. 2 Leach, 694.

1 Leach, 255. 339. See also 45 Geo. 3. c. 121. s. 11.

As to the proceedings to be adopted against offenders by the 12th section of this act, any judge or justice before whom any information is made on oath against a person charged with any of the above offences, must certify the same to one of the secretaries of state, whereon his majesty in council may make an order, published in the Gazette, requiring the accused to render himself within sixty days, or such longer time as thought fit; and it then directs how the sheriff is to publish the order in market-places, &c.; and enacts, that persons not surrendering or escaping shall be attainted of felony without the benefit of clergy, if the offence is committed within certain limits; and if not, in or within 100 leagues of the coast of Scotland, the act shews how the offender is to be dealt with.

On the act 9 Geo. 2. c. 35. and the decisions whereon would be applicable to the 52 Geo. 3. a person joining with others, who are armed with fire arms, who has nothing but a horsewhip, is not indictable, 2 Stra. 1166. 1 Leach, 23. Cro. C. C. 449. Nor does it seem that taking up a hatchet accidentally during the heat of an affray, is being armed with an offensive weapon within the meaning of the statute, Rose's case, 1 Leach, 342, n.a. So large sticks with large knobs at the end, and several prongs naturally growing out of them, have been holden not to come under this description, Ince's

bines, pole-axes, large sticks, bludgeons, clubs, and loaded whips, unlawfully, riotously, routously, and feloniously did

case, *id. ibid.*; but this seems questionable. And it has been said by Lord Mansfield, that it is not necessary, under this act, that every individual should be armed, *Cald. 246. 1 Leach, 255*; but see *2 Stra. 1166*. To bring prisoners within the words "shall be assembled in order to be aiding and assisting, &c." there must be a deliberate assembling, and not a mere casual meeting, *1 Leach, 339*. For an analysis and comment on the provisions of the *19 Geo. 2. c. 34.* and which in most respects would be applicable to the statute *52 Geo. 3. c. 143.* see *1 Leach, 339*. The defects in some of the provisions in *19 Geo. 2.* are supplied by *45 Geo. 3. c. 121. s. 11*, which makes any forcible resistance or assault on custom-house or excise officer, or aiding and assisting therein, felony, punishable with transportation for seven years, or imprisonment in the house of correction or common gaol for any term not exceeding three years, at the discretion of the court in which the offenders are convicted.—*Process.* For mode of attainder by non-appearance, see recital of the act, *ante, 123*, in note. In the construction of the old provision of the *19 Geo. 2.* it was holden that the sheriff is bound to make proclamation and affix copies of the order in two market towns, *near* the place where the crime is charged to have been committed, which, though they need not be the *next*, must not be thirty or forty (now *sixty* by *52 Geo. 3.*) miles distant when there are others nearer, *Fost. 58*. This decision would be applicable to the

52 Geo. 3. When the prisoner is taken, it is said that the course is to direct a *habeas corpus* to the officer, in whose custody he remains, to bring him before the court of King's Bench, which, when obeyed, is entered on the roll with the return, and a suggestion is added by the attorney-general, setting forth the information and all the subsequent proceedings in the order directed by the statute, and concluding with a prayer for award of execution against the prisoner, see form, *Fost. 51*. The prisoner may traverse the suggestion on which it lies on the crown to prove all its allegations, *Fost. 56*. He must plead *instanter* and *ore tenus, id. ib.*; will be allowed counsel, but no copy of suggestion which may be read to him, *id. ibid.*; *venire* will be awarded to try the issue, *id. ibid.* If it be found by the jury for the prisoner, he will be remanded to take his trial, *Fost. 58*. The attorney-general may, if he thinks fit, after the prisoner has been arraigned on the suggestion, enter a *nolle prosequi* as to the suggestion, and try the indictment in the common course of proceeding. *Cassan's case, Williams, J. Smuggling, IV.—Indictment.* As to the venue, the *52 Geo. 3. c. 143.* provides, that if the offence be committed in Guernsey, Jersey, Sark, or Man, it shall be tried there; if out of the United Kingdom, then it shall be tried in the United Kingdom; if within England, Scotland, or Ireland, in any county thereof, part of the United Kingdom. This regulation does not extend to assaults on offi-

assemble themselves together, *in order to be aiding and assisting* in rescuing and taking away from A. B. then and there being one of the officers of the excise of our said lord the king, a large quantity of foreign brandy(a), to wit, one hundred gallons of foreign brandy, the same foreign brandy being uncustomed goods, and goods liable to pay duties, which had not been paid or secured, after seizure of the said foreign brandy by the said A. B. as being one of such officers of the excise as aforesaid, to wit, on the said, &c. aforesaid, at, &c. aforesaid, in contempt of our said lord the king and his laws, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity. [Second count for being assembled with others, &c. as in the first count, except that it states that they "*did aid and assist*" certain other persons to the jurors unknown, in rescuing and taking away from the said A. B., &c. after seizure, &c.]

Second count,
for actually aiding
and assisting,
&c.

cers, if they be not in the execution of their duty, 4 T. R. 490.—*Evidence.* In an indictment for assaulting officers, &c. who had seized goods, it seems not clearly decided what evidence is necessary to support the allegations that the parties attacked were *excise officers*, and the goods seized *uncustomed goods*. It seems, however, that the first of these allegations need not to be positively proved, but that by 1 Geo. 2. c. 30. s. 22. (now 52 Geo. 3. c. 143.) excise officers, acting in the execution of their duty, shall be taken as excise officers until the contrary appear, the onus probandi is thrown on the defendant, 1 Leach, 340, n. a. and see 1 Leach, 415. 4 T. R. 366. 3 Campb. 432. But reasonable proof must be given that the goods were uncustomed goods, and that the circumstances under which they were seized were sufficient for the jury to exercise their judgment on that fact. 1 Leach, 340, n. a.—*Judgment*, Death; see the statute recited. Corruption

of blood and loss of dower saved, 19 Geo. 2. c. 34. s. 5.—*Rewards, &c.* Any person apprehending an offender shall receive £500; if wounded in the attempt, £50; and, if killed, his executors will receive £100. An offender himself, against whom no order in council has issued, discovering and apprehending any other offender against whom such order shall be made, shall be acquitted of his own offence and of all other offences of the same kind, for which no prosecution has been commenced, and shall have his share of the reward, 19 G. 2. c. 34. s. 10; and, if he discover two, he shall have £50 for each party convicted, and be entitled to his own discharge, 19 Geo. 2. c. 34. s. 11. Cro. C. C. 10, 11.

(a) Some of the precedents omit specifying the goods in particular, and say, "certain uncustomed goods," [or *certain prohibited goods*] [or *certain goods liable to pay certain duties, and which said duties were not then paid or secured.*]

Third count,
states the seizure
and that the parties
were aiding,
&c.

And the jurors aforesaid, upon their oath aforesaid, do further present, that on, &c. aforesaid, at, &c. within Great Britain, (*according to the fact*) one A. B. then and there being one of the officers of the excise of our said lord the king, did duly seize a large quantity of foreign brandy, (that is to say) one hundred gallons of foreign brandy, the said foreign brandy being uncustomed goods, and goods liable to pay duties, which had not been paid or secured. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said (defendants) and divers other persons, to the number of three persons and more, whose names are as yet unknown to the said jurors, after the said twenty-third day of July, which was in the year of our Lord one thousand eight hundred and twelve, to wit, on the said, &c. with force and arms, at, &c. aforesaid, within Great Britain, (*according to the fact*) being then and there armed with fire arms and other offensive weapons, to wit, with guns, &c. [*as before*] unlawfully, riotously, routously, and feloniously did assemble themselves together, and being then and there so assembled as last aforesaid, and being then and there so armed as last aforesaid, unlawfully, riotously, routously, and feloniously were aiding and assisting in rescuing and taking away from the said A. B., then and there being one of such officers of the excise of our said lord the king, the said last-mentioned foreign brandy (*a*), after such last-mentioned seizure of the said foreign brandy by the said A. B., then and there being one of such officers of the excise as aforesaid, to wit, on the said, &c. at, &c. in contempt of our said lord the king and his laws, against the form of the statute, &c. and against the peace, &c.

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For felony, under
52 Geo. 3. c. 143,
s. 11. for assembling
armed to assist in
running and carrying
away uncustomed
goods (*b*).

Surrey. That C. D. late of, &c., E. F. late of, &c., and I. K. late of, &c., and L. M. late of, &c., since the twenty-third day of July, which was in the year of our Lord one thousand eight hundred and twelve, to wit, on, &c. with force and arms, at, &c. within Great Britain, (*according to the fact*) being armed with fire arms and other offensive weapons, to wit, with guns, pistols, carbines, pole-axes, large sticks, bludgeons, clubs, and loaded whips, unlawfully and feloniously did assemble themselves together, in order to be aiding and assisting in running and carrying away uncustomed goods, and goods

(a) Vide note (a), 125.

(b) See 2 Leach, 604, and ante, 124, note (a).

liable to pay duties, which had not been paid or secured, to wit, 1800 lbs. of tobacco (a), upon which the duties had not been paid or secured, in contempt of our sovereign lord the king and his laws, to the evil and pernicious example of all others, against the peace, &c. and also against the statute in such case made and provided. [Second count for assembling, &c. to be aiding and assisting in the carrying away uncustomed goods, omitting "*in the running, &c.*"]

That C. D. late of, &c. on, &c. in, &c. feloniously and maliciously did shoot at and upon a certain ship, called the ———, belonging to the navy of our lord the king (b), within the limits of a certain harbour of Great Britain, (*according to the fact, vide the act*) called ———, to wit, at, &c. against the form of the statute, &c. and against the peace, &c.

On 52 Geo. 3. c. 143. s. 11, for firing upon a king's ship.

That C. D. late of, &c. after sun-set and before sun-rise, between the 21st day of September and the 1st day of April, to wit, on, &c. on and from the coast and shores of Great Britain, (*according to the fact, vide the act*) to wit, at, &c. in, &c. did unlawfully make, and aid and assist in making, and was then and there unlawfully present, for the purpose of aiding and assisting in the firing of a certain gun, for the pur-

On the 47 Geo. 3. sess. 2. c. 66. s. 34, for making signals to assist smugglers (c).

(a) Some precedents omit specifying the goods.

(b) Or, "in the service of the customs or excise," according to the fact.

(c) By the 47 Geo. 3. sess. 2. c. 66. s. 34, no person shall, after sun-set and before sun-rise, between 21st September and 1st April, or after eight in the evening and before six in the morning, between last day of March and 22d September, make, or assist in making, or be present for assisting in making, any light, &c. or any signal by smoke, or by any rocket, &c. firing of any gun, &c. or any other contrivance or device, in any ship, &c. or from the shore, or six miles of it, for giving signal to persons on board smuggling vessels, whether

such persons see or hear it, or may be able so to do, or not, and the offender shall be deemed guilty of a misdemeanor; and any persons may arrest such offender, and carry him before a justice of the peace, who may commit him till the assizes, &c. and the penalty, on conviction, is £100 or one year's imprisonment. By 35th sect. of same act, the proof of purpose of making fires, &c. shall lie on defendant. The 36th sect. points out how persons apprehended for offences against this act, or 42 Geo. 3. c. 82, or 45 Geo. 3. c. 121, shall be bailed by justices of the peace. The 37th sect. authorizes any person to enter lands, &c. and extinguish signals by fire, &c.

pose of making and giving a signal to some person and persons to the jurors aforesaid unknown, on board a certain smuggling boat, (*ship, or vessel, according to the fact*) there being, to wit, at, &c. in, &c. against the form of the statute, &c. and against the peace, &c.

For a misdemeanor, on statute 24 Geo. 3. c. 47. s. 15, for assaulting and obstructing an officer of excise in execution of his duty on shore (*a*).

That N. B., J. K., and O. R., to wit, on, &c. with force and arms, at, &c. in and upon C. W., then and there being an officer of our lord the king, in the service of the excise of our said lord the king, duly constituted and appointed, and then and there being on shore in the due execution of his office and duty as such officer as aforesaid, in seizing and securing to and for the use of our said

(*a*) See other precedents, 2 Leach, 803. 1 Bos. & Pul. 187. Stark. 398; and see the precedent and notes, ante, 122 to 126. *As to the offence.* The 24 Geo. 3. sess. 2. c. 47. s. 15, enacts, that if any officer of his majesty's navy, customs, or excise, being on shore or going on board, or being on board, or returning from on board, any ship, boat, or vessel within the limits of any of the ports of this kingdom, or within four leagues from the coasts thereof, shall be hindered, opposed, obstructed, or assaulted in the due execution of his or their office or duty, either in the day-time or night; every person so hindering, opposing, obstructing, or assaulting, shall, on conviction, be sentenced to hard labour on the river Thames, or other navigable river in that part of Great Britain, called England, for any term not exceeding three years, according to the directions of 19 Geo. 3. c. 74. Vide also the 26 Geo. 3. c. 77. s. 18, relating to assaulting officers in execution of quarantine laws. The 24 Geo. 3. c. 47, is not repealed by 24 Geo. 3. c. 48. s. 10. It extends to officers employed not only in

suppressing smuggling, but engaged in every other branch of the revenue. If the officer be engaged in a search for goods which have not paid the duties, he will be within the protection of this act, though he has no warrant, and the words "*on shore*" extend to every part of the land, however distant from the sea, 2 Leach, 803. 1 Bos. & Pul. 187. *Proceedings before magistrates, plea, &c.* The offender may be conveyed before one or more justices residing near to the place where the offence was committed, and by him or them sent to the county gaol for trial at the assizes, 24 Geo. 3. sess. 2. c. 47. s. 15. Justice may not admit him to bail, without a recognizance, himself in £200, and two sureties in £100 each; which, if taken, are immediately to be transmitted to the clerk of assize or other proper officer of the court where the party is bound to appear, 24 Geo. 3. sess. 2. c. 47. s. 19. If an indictment be found against him, he will not have time given him to traverse it, as is usual in case of misdemeanors, but must plead and be tried immediately, Id. s. 15. By the 26 Geo. 3.

lord the king, a large quantity, to wit, 500 pounds' weight of soap (a), which said soap was then and there liable to be seized by the said C.W. as such officer as aforesaid, and then and there being in the peace of God and of our said lord the king, unlawfully and violently did make an assault, and him the said C.W. so being then and there *on shore* in the due execution of his said office and duty in manner aforesaid, unlawfully and forcibly did hinder, oppose and obstruct, to wit, at, &c. and other wrongs, &c. to the great damage, &c. in contempt, &c. to the evil example, &c. against the peace, &c. and against the form of the statute, &c. [The second count charged the defendants with having assaulted C.W. an officer of the excise, then and there being *on shore* in the execution of his duty; and the third count charged, that the defendants hindered, opposed, and obstructed C.W. he then and there being an officer of the excise, and *on shore* in the due execution of his duty.]

[Commencement of information as ante, 6.] To understand and be informed, that some time ago, that is to say, on, &c. at, &c. one A. B. of, &c. one of the officers of excise of our said present sovereign lord the king, in his own proper person, came before G. H. esquire, and J. K. esquire, two of the justices of our said present sovereign lord the king, assigned to keep the peace of our said present sovereign lord the king, in and for the county of S. aforesaid, and also to hear

Information by attorney-general, for a misdemeanor at common law, in assaulting excise officers, and presenting a gun at them in defendant's house, which they had entered, under two warrants of distress, upon conviction for selling liquor, unlicensed (b).

c. 77. s. 18, persons assaulting revenue officers or their assistants, in the execution of their duty as such, or rescuing, or attempting to rescue by force, uncustomed goods after seizure, a judge of K. B. shall issue his warrant to apprehend him, and he shall find bail to appear, or he shall be committed to gaol until he shall be found, or until discharged by order of court or judge; such recognizance to be returned and filed, and continue in force till acquitted; and, by 35 G. 3. c. 96, where such offender is detained for want of bail, the prosecutor may cause a copy of the indictment to be deli-

vered him, with notice, and prisoner shall appear and plead, &c. as therein directed, (see also as to the pleading, Rep. T. T. 1795, 6 T. R. 400.) *Indictment.* The venue may be laid in any county of England or Wales, if the offence be committed in England, Wales, Berwick, or within four leagues of any part of the coasts, 24 Geo. 3. sess. 2. c. 47. ss. 15 & 17.

(a) Vide ante, 125, n. (a).

(b) See 4 Wentw. 394, and other precedents for misdemeanors at common law, in assaulting and obstructing officers of excise acting under warrants, 4 Wentw. 375. 377.

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Defendant's appearance, confession, and conviction.

and determine divers felonies, trespasses, and other misdemeanors committed within the said county, and then and there gave to them the said justices, information and complaint that C. D. &c. [*here set out the information*], and that thereupon afterwards, that is to say, on, &c. at, &c. one L. M. of, &c. being a credible witness in that behalf, came before them the said justices, and took his corporal oath upon the Holy Evangelists to speak the truth of and concerning the premises specified in the said information (they the said justices having then and there sufficient and competent power and authority to administer the said oath to the said L. M. in that behalf); and the said L. M. being so sworn as aforesaid, then and there, before the said justices, said, deposed and swore, of and concerning the premises contained in the said information, that, &c. [*here set forth the evidence and then proceed as follows:*] And that thereupon the said C. D. after having been duly summoned, and then appearing before them the said justices upon the said, &c. at, &c. and being then present, and having fully understood the said information, and the said evidence thereupon given by the said A. B. was then and there asked by them the said justices, if he had any thing to say for himself why he the said C. D. should not be convicted of the premises charged upon him, in and by the said information; and that forasmuch as the said C. D. then acknowledged to them the said justices, that he had not such licence for retailing spirituous liquors, as the statutes in that case made required; and because it manifestly appeared to them the said (justices,) they having heard and fully understood all and singular the matters and things alleged by the said C. D. in his defence, that the said C. D. was

385. 387. 392. 399. 400. 437. Ashhurst, Just. Paper Books, 24 vol. 169, 170. 25 vol. 81. 26 vol. 99.—*As to the offence.* To warrant an information or indictment for obstructing officers in the execution of their duty, it is not necessary that smuggled goods should actually be found, though the officers search at their peril, 6 Esp. Rep. 126. *in notis*; but as to the latter point, see 1 T. R. 535. 3 Esp. Rep. 135.—*Evidence.* A conviction on which

a warrant to seize or distrain is grounded may be given in evidence, to prove that such a proceeding has taken place, but not to contradict the testimony of a witness by comparing it with his former evidence given before a magistrate, 6 Esp. Rep. 124. The defendant's counsel has no right, nor will be permitted to inquire the name of the person who gave the information respecting the smuggled goods, 6 Esp. Rep. 125. *in notis.*

guilty of the said premises specified in the said information, and charged upon him the said C. D. in and by the said information, in manner and form as in and by the said information had been alleged against him as aforesaid, therefore it was then and there considered and adjudged by the said justices that the said C. D. upon the evidence of the said A. B. (being a credible witness, upon oath as aforesaid) should be and was convicted of the matters and things alleged against him in and by the said information as aforesaid, according to the form of the statute in that case made and provided, and that he the said C. D. should forfeit the sum of ten pounds of lawful money of Great Britain, which said forfeiture of ten pounds they the said justices did then and there mitigate and lessen to the sum of five pounds, to be distributed as the law in that case directed, as by the said record of conviction (relation being thereunto had) doth more fully appear. And the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king giveth the court here further to understand, that some time ago, that is to say, upon, &c. at, &c. in, &c. the said A. B. being then one of the officers of, &c. &c. [*The information then stated another complaint before magistrates upon a similar charge, with the evidence and conviction, and then proceeds as follows,*] and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king giveth the court here further to understand and be informed, that afterwards, that is to say, upon the said, &c. the said G. H. and J. K. the justices aforesaid, did, in consequence of the said several convictions, according to due form of law, make and issue out two several warrants in writing under their hands and seals, bearing date upon the said, &c. and directed to the said constables and tithing-men of the county of S. and also to R. R., J. B. and J. B. (being three of the officers of excise of our said present sovereign lord the king) or to either of them, and to such other persons or person as they the said R. R., J. B., and J. B. or either of them should take to their assistance; by one of which said warrants they the said R. R., J. B., and J. B. and each and every of them, and such other persons or person as they the said R. R., J. B., and J. B. or either of them should take to their assistance were authorized and commanded, that they, every, or any of them should levy, upon the goods and chattels of the said C. D. the said sum of five pounds, recovered against him the said C. D. by the said A. B. in the said warrant named, who prosecuted as well for

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Second information, evidence, confession, and conviction.

Warrants to levy penalties.

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our said present sovereign lord the king as for himself, for a certain offence alleged in the said warrant to have been committed by the said C. D. against the laws and statutes of excise, being the same offence whereof the said C. D. then stood convicted as aforesaid by the said first-mentioned conviction before them the said G. H. and J. K. the justices aforesaid, and for levying thereof the said R. R., J. B. and J. B. or either of them, and such other persons or person as they the said R. R., J. B. and J. B. or either of them should take to their assistance, were commanded by the said last-mentioned warrant to seize, take, and carry away the goods and chattels last aforesaid: and if in fourteen days next after such seizure, the same should not be then redeemed, that then and in such case, and after the expiration of the said fourteen days, they the said R. R., J. B., and J. B. or either of them, or any such persons or person as they the said R. R., J. B., and J. B. or either of them should take to their assistance, were commanded by the said warrant to make sale thereof, or of so much thereof as would be sufficient to levy the said sum of £5; and when the same should be levied, they the said R. R., J. B., and J. B., or either of them, and such other persons or person as they or either of them should take to their assistance, were also commanded by the said warrant forthwith to pay the same to the collector of the excise, for the collection called Taunton Collection for the time being, to be by him applied and answered for, and according to the statute in such case made and provided; and if after levying thereof any overplus should remain of the said goods and chattels as aforesaid, of the money arising by sale thereof, that then the said R. R., J. B., and J. B., or either of them, or such persons or person as they or either of them should take to their assistance, should render such overplus to the said J. B., and it was further commanded in and by the said warrant to all constables and headboroughs of the said county, and they were thereby required to be aiding and assisting to the said R. R., J. B., or to either of them, or to such other persons or person as they or either of them should take to their assistance in the due execution of the said warrant; but in case there should not be found sufficient to levy the sum last-mentioned, then, and in such case they the said R. R., J. B., and J. B. or either of them, and such persons and person as they or either of them should take to their assistance, a return of the said warrant was commanded forthwith to certify the same to the said J. C., C. C., and J. B. the

justices aforesaid; and by the other of the said warrants, they the said R. R., J. B., and J. B. and each and every of them and such other persons or person as they the said R. R., J. B., and J. B. or either of them should take to their assistance, were authorized and commanded that they, every, or any of them, should levy upon the goods and chattels of the said J. B. the said other sum of £5. [*The information then states a second warrant of seizure similar to that already recited, grounded upon the second conviction*], as by the said two several warrants, relation being thereunto had, doth more fully appear; which said two several warrants, afterwards, that is to say, on, &c. were in due manner delivered to the said J. B. to be executed in due form of law. And the said attorney-general of, &c. for, &c. giveth, &c. that the said J. B. having then and there full power and authority, by virtue of the said two several warrants, to levy the said two several sums of five pounds so recovered against him the said C. D. as aforesaid, upon the goods and chattels of the said C. D. he the said J. B. afterwards, that is to say, on, &c. taking to his assistance one J. A. another officer of excise of our said present sovereign lord the king, and also one E. B. constable of, &c. went to the dwelling-house of the said C. D. (being a public ale-house or victualling-house, in, &c.) in order to levy the said several sums of five pounds on the goods and chattels of the said C. D. according to the directions of the said two several warrants, and the said J. B. then and there by virtue of the said two several warrants demanded of the said C. D. the said several sums of five pounds, then and there telling the said C. D. that unless the said C. D. would pay the several sums of five pounds, they the said J. B. E. B. and J. A. should be obliged to levy upon and distrain the goods and chattels of the said C. D. for the payment thereof; upon which the said C. D. of, &c. in, &c. dealer in brandy, being a person of a wicked mind, and of a violent and turbulent temper and disposition, and unlawfully and wickedly devising, contriving, and intending to hinder and obstruct the due course of law and justice, in and upon the said J. B. and J. A. being then and there two officers of the excise of our present sovereign lord the king as aforesaid, and being also then and there in the due execution of their said several and respective offices in endeavouring to execute the said two several warrants as aforesaid, and being also then and there in the peace of God, and of our said present sovereign lord the king, then and there, with force and arms, unlawfully and violently did

Second warrant.

Delivery of warrants to the officers.

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Demand of the sum forfeited.

Defendant's assault on the officers, &c.

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make an assault and affray, and thereupon the said J. B. and J. A. he the said C. D. did then and there with force and arms, unlawfully and violently beat, wound, and treat so ill, that their lives were then and there greatly despaired of, and also that he the said C. D. did then and there, with force and arms, unlawfully, wickedly, and maliciously present, level, and point at and towards them the said J. B. and J. A. a certain gun, which he the said C. D. then and there had and held in his hands, and he the said C. D. at the same time holding his finger on the ketcher or trigger thereof, ready to discharge, and let off the same, he the said C. D. in a most vehement and outrageous manner, swearing and threatening that he the said C. D. would shoot them, the said J. B. and J. A. if they did not immediately get out of his said house; upon which the said J. B. and J. A. were then and there obliged, for the preservation of their lives, to retire and get out of the said house, he the said C. D. then and there following them, the said J. A. and J. B. to the outer door of the said house, into the king's common highway or street, there, having at the same time, the said gun so presented, levelled, and pointed at and towards them the said J. B. and J. A. as aforesaid; and that he the said C. D. did then and there, with force and arms, unlawfully, violently, and maliciously give him the said J. A. a violent blow upon the body of him the said J. A. by pushing the muzzle of the said gun against the back of him the said J. A. by reason and means whereof, they the said J. B. and J. A. were then and there hindered and absolutely prevented from executing the said two several warrants, or either of them, for the intents and purposes for which the same were so made and issued out as aforesaid, and other mischiefs upon them the said J. A. and J. B. he the said C. D. did then and there, with force and arms, unlawfully and violently bring, to the great damage of them the said J. B. and J. A. in contempt of our said present sovereign lord the king, and his laws, to the manifest hindrance and obstruction of public justice, to the evil and pernicious example of all others, and also against the peace of our said sovereign lord the king, his crown, and dignity. And the said attorney-general of, &c. for, &c. giveth, &c. that the said C. D. afterwards, that is to say, on, &c. with force and arms, at, &c. in and upon them the said J. B. and J. A. being then and there two of the officers of the excise of our said present sovereign lord the king, and being also then and there in the due execution of their said several and respective offices, and

Second count,
for assaulting the
officers in execu-
tion of their of-
fice, not setting
out the former
proceedings.

being also then and there in the peace of God, and of our said present sovereign lord the king, unlawfully and violently did make an assault and affray, and them the said J. B. and J. A. he the said C. D. did then and there, with force and arms, unlawfully and violently beat, wound, and treat so ill, that their lives were greatly despaired of, and also them the said J. B. and J. A. being also then and there in the due execution of their said several and respective offices as aforesaid, he the said C. D. with force and arms, did unlawfully, violently, and forcibly, hinder, obstruct, resist, oppose, abuse, and molest, and other, &c. [*as in the conclusion of the first count, only instead of the words "to the manifest hindrance and obstruction of public justice," say "in diminution of the revenue of exercise of our said present sovereign lord the king."*] And the said attorney-general, of, &c. for, &c. giveth, &c. that he the said C. D. afterwards, that is to say, upon, &c. with force and arms, at, &c. in and upon them the said J. B. and J. A. being then and there in the dwelling-house of him the said C. D. and being also then and there in the peace of God and of our said present sovereign lord the king, unlawfully and violently did make an assault and affray, and them the said J. B. and J. A. he the said C. D. did then and there, with force and arms, unlawfully, and violently beat, wound, and treat so ill, that their lives were greatly despaired of; and also that he the said C. D. did then and there, with force and arms, unlawfully, wickedly, and maliciously, present, point, and level at, and toward them the said J. B. and J. A. a certain other gun, which he the said C. D. then and there had and held in his hands, he the said C. D. at the same time holding his finger on the ketcher or trigger thereof, ready to discharge and let off the same, and then and there in a most vehement and outrageous manner, swearing and threatening that he the said C. D. would shoot them the said J. B. and J. A. if they did not immediately get out of his said house; upon which they the said J. A. and J. B. were then and there forced and obliged, for the preservation of their lives, to retire and get out of the said house; he the said C. D. then and there following them the said J. B. and J. A. to the outer door of the said house, into the king's common highway or street, there, having at the same time, the gun so presented, levelled, and pointed at and

Third count, for the special assault, not stating the officers to have been acting in that character (a).

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(a) See post, for precedents for assault against Common Law.

Fourth count,
for a common as-
sault and affray.

toward them the said J. B. and J. A. in manner aforesaid ; and that he the said C. D. did then and there, with force and arms, unlawfully, violently, and maliciously, give him the said J. A. a violent blow upon the back of him the said J. A. by pushing the muzzle of the said gun against the back of him the said J. A. and other mischiefs upon them the said J. B. and J. A. &c. &c. [*as in the conclusion to a common assault.*] And the said attorney-general, of, &c. for, &c. giveth, &c. that he the said C. D. afterwards, that is to say, upon, &c. at, &c. in and upon them the said J. B. and J. A. being then and there in the peace of God, and of our said present sovereign lord the king, unlawfully and violently did make an assault and affray, he the said C. D. did then and there, with force and arms, unlawfully and violently beat, wound, and treat so ill, that their lives were greatly despaired of, and other, &c. [*conclusion same as in the third count.*] whereupon the said attorney-general of, &c. for, &c. [*conclusion of information, as ante, 6.*]

The like against
three, for a riot-
ous assembly and
obstruction (a).

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[*The same as the first count of the last precedent, to the statement of the entry into the house of the party convicted, in order to levy, and then proceed as follows.*] And the said attorney-general of, &c. for, &c. giveth the court here to understand and be informed, that D. T. late of, &c. W. K. late of, &c. R. T. late of, &c. well knowing the premises, but having no regard for the laws and statutes of this realm, and being rioters and disturbers of the peace of our said lord the king, and unlawfully devising, contriving, and intending to obstruct and impede the due course of law and justice, and to prevent the aforesaid sum of twelve pounds, ten shillings, from being levied on the aforesaid goods and chattels of the said W. J. together with divers other persons, whose names are at present unknown to the said attorney-general of, &c. on, &c. with force and arms, at, &c. unlawfully, riotously, routously, and tumultuously, did meet and assemble themselves together near to the said dwelling-house of the said W. J. (b), there situate, with intent to break and disturb the peace of our said lord the king, and to obstruct the said W. C. and J. B. so being such officers as aforesaid, in the due execution of their said offices, and of the said warrant so made as aforesaid, and being so assembled and met together, did then and there make a very

(a) See precedent, 4Wentw. Ante, 127, 128, in notes.
400; and other precedents, (b) The party convicted.

great noise, tumult, riot, and disturbance, and did then and there unlawfully, riotously, routously, and violently endeavour, and attempt by force, to enter the said dwelling-house of the said W. J. in which the said W. C. and J. B. were then seizing and taking the goods and chattels of him the said W. J. by virtue of, and in execution of the said warrant, and in and upon them being then and there in the peace of God, and our said lord the king, and being also then and there in the due execution of their said several and respective offices, and of the said warrant, did then and there, with force and arms, unlawfully, riotously, routously, and violently make an assault, and them the said W. C. and J. B. in the due execution of their said several and respective offices, and of the said warrant so made as aforesaid, did then and there, with force and arms, unlawfully, &c. hinder, obstruct, oppose, resist, molest, and abuse, and did threaten to kill and murder him the said W. C. and other wrongs to the said W. C. and J. B. they the said defendants, then and there, with force and arms, unlawfully, riotously, routously, and violently did, to the great damage of the said W. C. and J. B. in contempt, &c. to the great hindrance and obstruction of public justice, to the evil and pernicious example, &c. and against the peace, &c. *And* the said attorney-general of, &c. for, &c. further giveth, &c. that on, &c. at, &c. in, &c. Sir W. F. and W. W. two of the justices of our said lord the king, assigned to keep the peace within the said riding, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said riding, did, in due form of law, make their certain warrant in writing, under their hands and seals, directed to Messrs. W. C. and T. B. officers of excise, or either of them, or to such other person or persons as they or either of them should take to their assistance, and did, by the said warrant of his majesty's name, authorize them or any of them, that upon the goods and chattels of W. J. of, &c. in, &c. they should levy, &c. [*here state the warrant*] which said last-mentioned warrant was then and there delivered to the said W. C. and T. B. to be executed in due form of law; and the said attorney-general of, &c. for, &c. giveth, &c. that they the said W. C. and T. B. afterwards, to wit, on, &c. the said sum of twelve pounds, ten shillings, being and remaining wholly unpaid, by virtue and in execution of the said warrant, did go to the dwelling-house of the said W. J. situate at, &c. and did then and there proceed to levy the said sum of twelve

Second count,
for obstructing
the officers in the
execution of their
office, in levying
a sum of money
on the goods of
W. J. by virtue
of a warrant from
two justices ge-
nerally, without
setting forth the
conviction.

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Third count,
for tumultuously
assembling and
making a riot.

pounds, ten shillings, upon the goods and chattels of the said said W. J. then being in the said house. And the said attorney-general of, &c. for, &c. further giveth, &c. that they the said defendants, well knowing the premises, but having no regard for the laws and statutes of this realm, and unlawfully devising, contriving, and intending to obstruct the due course of law and justice, them the said W. C. and J. B. then and there being in the peace of God, and our said lord the king, and being also then and there in due manner levying the said sum of twelve pounds, ten shillings, upon the goods and chattels of the said W. J. by virtue of the said warrant, did unlawfully, violently, and forcibly hinder, obstruct, oppose, molest, and abuse, in contempt of, &c. to the evil, &c. and against the peace of, &c. And the said attorney-general, of, &c. for, &c. giveth, &c. that they the said defendants, together with divers other persons, whose names are at present unknown to the said attorney-general of, &c. being rioters, routers, and disturbers of the peace of our said lord the king, afterwards, that is to say, on, &c. with force and arms, at, &c. in, &c. did unlawfully, riotously, routously, and tumultuously meet and assemble together, to break and disturb the peace of our said lord the now king, and being so assembled and met together, did then and there make a great noise, tumult, riot, and disturbance, and did then and there remain and continue so assembled as aforesaid, and making such noise as aforesaid, for a long space of time then next following, to the great disturbance of the public peace, in contempt, &c. to the evil, &c. and against the peace, &c. And the said attorney-general of, &c. for, &c. giveth, &c. that they the said defendants, afterwards, that is to say, on, &c. with force and arms, at, &c. them the said W. C. and J. B. being then and there officers of excise of our said lord the king, and being then and there in the peace of God and of our said lord the king, and being also then and there in the due execution of their said several and respective offices, did unlawfully, violently, and forcibly hinder, obstruct, resist, molest, oppose, and abuse, in contempt of, &c. to the evil, &c. and against the peace, &c. Whereupon the said attorney-general of, &c. for, &c. prayeth, &c. [*Conclusion of information, as ante, 6.*]

Fourth count,
for obstructing
officers of excise
in the execution
of their office.

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For a misdemeanor at common law, for assaulting

[*Commencement of information, as ante, 6.*] That C. D. late of, &c. and E. F. late of, &c. together with divers other

persons whose names are at present unknown to the said attorney-general, having no regard to the laws and statutes of this realm, and unlawfully devising, contriving, and intending to cheat and defraud our said lord the king in his revenue, on, &c. with force and arms, at, &c. in and upon C. C. being then and there one of the officers of the excise of our said lord the king, duly constituted and appointed (b), and being then and there in the peace of God and of our said lord the king, and being also then and there in the due execution of his said office, in the due seizing and securing as forfeited to and for the use of our said lord the king, a certain large quantity of goods and foreign brandy, and also three horses used in the removing, carriage, and conveyance of the same, which might then lawfully be seized by the said C. C. as such officer as aforesaid, the said goods and foreign brandy then lately before having been unlawfully imported into this kingdom, from parts beyond the seas, did unlawfully and violently make an assault, and him the said C. C. did then and there, with force and arms, unlawfully and violently beat, wound, and treat so ill, that his life was greatly despaired of; and also him the said C. C. in the due execution of his said office as aforesaid, did then and there, with force and arms, unlawfully, violently, and forcibly hinder, obstruct, resist, oppose, molest, and abuse; and that they the said defendants, and the said other persons whose names are unknown as aforesaid, part of the aforesaid goods, and also two of the said horses, after such seizure thereof by the said C. C. as aforesaid, being then and there in the legal custody and possession of the said C. C. as such officer as aforesaid, and by him then and there detained and intended to have been secured to and for the use of our said lord the king, for the reasons aforesaid, out of the custody and possession of the said C. C. against the will, and without the consent of him the said C. C., did then and there unlawfully, and by force and violence take and rescue, and cause and procure to be rescued, and other wrongs to the said C. C. they the said [defendants] and the said other persons whose names are unknown as aforesaid, then and there, with force and arms, unlawfully and violently did, to the great damage of the said

excise officer in execution of his duty, and rescuing part of smuggled goods (a).

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(a) This precedent is from Ashhurst, J.'s MS. Paper Books, 23 vol. 269. See also 24 vol. 169.

(b) This allegation is not necessary, it is sufficient to state, generally, that the party was an officer of excise.

C. C. in contempt of, &c. to the evil, &c. and against the peace, &c.

Second count for assaulting C. C. being an officer duly constituted, &c. and hindering, obstructing, &c. in the due execution of his office. Third, for the assault on C. C. as an officer, omitting the hindering, &c.

Indictment for a misdemeanor at common law, in assaulting custom-house officer (a).

[*Commencement of indictment as ante, 2.*] That defendants on, &c. with force and arms, at, &c. unlawfully did make an assault upon J. J. then and there being one of the officers of the customs of our said lord the king, *duly constituted* and appointed (b), and being then and there in the peace of God and of our said lord the king, and being also then and there in the due execution of his office and duty as such officer as aforesaid, and then and there unlawfully and forcibly did hinder, oppose, and obstruct the said J. J. the officer aforesaid, so then being in the due execution of his said office and duty, at the parish aforesaid, in the county aforesaid, and then and there did other wrongs to the said J. J. to the great damage, &c. in contempt, &c. to the evil example, &c. and against the peace, &c. Second count, for obstructing the said J. J. being such officer, in the execution of his duty. Third count, for a common assault on the said J. J.

Information for a misdemeanor at common law for violently assaulting excise officers whilst endeavouring to seize smuggled rum (c).

[*Commencement of information, as ante, 6.*] That M. C. late of, &c. and J. B. late of, &c. having no regard for the laws of this realm, and unlawfully contriving to cheat our lord the king in his revenue, on, &c. with force and arms, at, &c. in and upon R. C. and S. L. being officers of the excise, and being in the peace of God and of our lord the king, and being also in the due execution of their said offices, in attempting to secure a certain cask, containing a large quantity of rum, to wit, four gallons and more, being of the value of 5s. and upwards, which said cask and rum might lawfully be seized by the said R. C. and S. L. as such officers, did violently make an assault, and him the said R. C. did violently beat, wound, and treat so ill, that his life was greatly despaired of, and did then

(a) This precedent is from Ashhurst, J.'s MS. Paper Books, 23 vol. 189.

(b) This allegation is not ne-

cessary; see ante, 136, n. (b).

(c) This precedent is from Ashhurst, J.'s MS. Paper Books, 24 vol. 163.

and there, with force and arms, unlawfully hinder, obstruct, resist, oppose, molest, and abuse, and other wrongs, &c. to the great damage, &c. in contempt, &c. to the evil example, &c. and against the peace, &c. Second count, for an *assault and obstruction* on the said R. C. being such officer. Third count, for an assault on the said R. C. in the due execution of his office, &c. Fourth count, for a common assault.

[*Commencement of information, as ante, 6.*] That J. L. late of, &c. W. L. late of, &c. D. L. late of, &c. and T. N. late of, &c. having no regard to the laws of this realm, but contriving and intending to cheat and defraud the king in his revenue of excise, on, &c. with force and arms, at, &c. in and upon J. H. an officer of the excise, duly constituted and appointed (*b*), and being then and there in the peace of God and of our said lord the king, and in due execution of his said office, did unlawfully and violently make an assault, and him the said J. H. did unlawfully and violently beat, wound, and ill-treat, so that his life was greatly despaired of, and also him the said J. H. in the due execution of his said office, did unlawfully, violently, and forcibly hinder, obstruct, resist, oppose, molest, and abuse, and other wrongs, &c. to the great damage, &c. in contempt, &c. in diminution of the revenue, &c. to the evil example, &c. and against the peace, &c. Second count, for an assault on the said J. H. in the execution of his duty as an officer of the excise.

Information for misdemeanor at common law, in assaulting excise officer in the execution of his duty (*a*).

[*Commencement of information, as ante, 6.*] That on, &c. at, &c. T. E. F. being an officer of the customs, did in due manner take and seize to and for the use of our said lord the king, a certain large quantity of uncustomed goods (to wit), four gallons and more of brandy, which might then lawfully be seized by the said T. E. F. as such officer as aforesaid, the same having then lately before been clandestinely imported into this kingdom, and for which the duties and customs had never been in any manner whatsoever duly paid, satisfied, or secured, and was then and there proceeding to secure the same, for the use of our said lord the king, to wit, at, &c. aforesaid. And

Information for misdemeanor at common law in assaulting an officer of the customs, and obstructing him in securing smuggled goods (*c*).

(*a*) This precedent is from Ashhurst J.'s MS. Paper Books, 24 vol. 162.

(*b*) This allegation is not ne-

cessary, see ante, 136, n. (*b*).

(*c*) This precedent is from Ashhurst J.'s MS. Paper Books, 26 vol. 98.

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that W.P. late of, &c. together with another person unknown, having no regard to the laws of this realm, and unlawfully devising and intending to cheat our said lord the king in his revenue afterwards (that is to say), on, &c. at, &c. aforesaid, in and upon the said T. E. F. being such officer as aforesaid, and being then and there in the peace of God and of our said lord the king, and in the due execution of his office, in manner aforesaid, did make an assault, and violently beat the said T. E. F. so that his life was then and there despaired of, and also him the said T. E. F. in the due execution of his said office, in securing the said uncustomed goods, did forcibly hinder and obstruct, and other wrongs to the said T. E. F. then and there did, to the great damage, &c. to the evil example, &c. and against the peace, &c. [Second count, for obstructing the said T. E. F. in the execution of his duty as such officer, Third count, for assaulting the said T. E. F. in the execution of his duty. Fourth count, for assault generally.]

Information
against a sur-
veyor of the
king's taxes for
persuading a col-
lector to secret a
part of the money
received (a).

[*Commencement as ante*, 6.] That one B. L. late of, &c. being a surveyor of the rates and duties placed under the management of the commissioners for the affairs of taxes, and acting as such surveyor for the hundred of H. in the said county of W. to wit, on, &c. at, &c. contrary to the duty of his office, subtly, unlawfully, and wickedly did solicit, incite, persuade, and endeavour to prevail upon one W. N. he the said W. N. then and there being an assessor and collector of the rates and duties aforesaid, and then acting as such assessor and collector in and for E. aforesaid, in, &c. aforesaid, in the said hundred of H. in the county aforesaid, if he the said W. N. should be assessor for E. aforesaid, of the rates and duties aforesaid, for the year commencing on the fifth day of April, in the year of our Lord one thousand seven hundred and ninety-nine, to make out, as such assessor as aforesaid, and deliver to the commissioners for putting in execution the acts relative to the duties placed under the management of the commissioners for the affairs of taxes acting in and for the hundred of H. in the said county of W. improper and imperfect assessments of

(a) See a precedent, Hand's Prac. 178, and see 6 East, 136, where it is stated to have been decided that an indictment at common law lies for a

fraud on the revenue. Indictment for attempting to bribe a revenue officer, 5 Esp. Rep. 231; for frauds as to stamps, 1 Leach, 383, 416, post, 141.

the rates and duties hereafter next mentioned, for the year commencing on the fifth day of April, in the year of our Lord one thousand seven hundred and ninety-nine, and to omit in such assessments the names of some of the inhabitants of E. aforesaid, then residing and being there, and liable to be charged in the said last-mentioned year, to certain rates and duties imposed by the statutes in that case made and provided, upon houses, windows, and lights, and upon inhabited houses, and upon male servants, carriages, horses, mules, and dogs, or to some or one of such duties; and nevertheless to collect from the persons omitted in such assessments as aforesaid, the amount of the rates and duties aforesaid, wherewith the said persons so omitted in the said assessments as aforesaid, were chargeable, without the knowledge of the said commissioners, and to convert the money so collected and received to his own use; and that the said W. N. in pursuance of such unlawful solicitations, incitement, and persuasion as aforesaid, afterwards, to wit, on, &c. at, &c. aforesaid, then being such assessor as aforesaid, and acting as such for E. aforesaid, did make improper and imperfect assessments of the rates and duties aforesaid, and did, in such assessments, then and there omit the names of some of the inhabitants of E. aforesaid, then residing there, and liable to be charged to the said rates and duties for the year commencing on the fifth day of April, in the year of our Lord one thousand seven hundred and ninety-nine, and did afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred, at, &c. collect from some of the said inhabitants whose names were so omitted as aforesaid, the amount of the rates and duties chargeable upon them as aforesaid, or some part thereof, and convert the money so collected as aforesaid, to his own use; the said B. thereby intending to defraud his majesty of the said rates and duties, in contempt of, &c. to the evil example, &c. and against the peace, &c. And the said coroner and attorney for our said lord the king who prosecutes as aforesaid, further gives the court to understand and be informed, that the said B. being such surveyor as aforesaid, and acting as such surveyor for the hundred of A. in the county aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, contrary to the duty of his said office, falsely, subtly, unlawfully, and wickedly did solicit, incite, and endeavour to prevail on the said W. N. then and there being an assessor and collector as aforesaid, in the said hundred of H. in the county aforesaid, to make, in and for E.

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Second count.

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Third count.

aforesaid, in the said hundred of H. in the county of W. improper and imperfect assessments for the rates and duties hereinafter next mentioned, for the year commencing on the fifth day of April, one thousand seven hundred and ninety-nine, and to omit in such assessments, the names of some of the inhabitants of E. aforesaid, then residing and being there, and liable to be charged in the year last aforesaid, to certain rates and duties imposed by the statutes in such case made and provided, upon houses, windows, and lights, and upon male servants, carriages, horses, mules, and dogs, or to some or one of such duties; and that the said W. N. in pursuance of such unlawful incitement and solicitation as aforesaid, afterwards, to wit, on, &c. being such assessor as aforesaid, and acting as such for E. aforesaid, at, &c. aforesaid, did make improper and imperfect assessments for the rates and duties last mentioned, and did in such assessments then and there omit the names of some of the inhabitants of E. aforesaid, then residing there, and liable to be charged for the said rates and duties for the said year, he the said B. thereby wickedly and unlawfully intending to defraud his said majesty of the said rates and duties, in contempt of, &c. to the evil example, &c. and against the peace, &c. And the said coroner and attorney of our said lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, that the said B. S. being such surveyor as aforesaid, and whilst he was acting as such, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, contrary to the duty of his said office, did unlawfully, wickedly, and corruptly solicit, incite, and endeavour to persuade one W. N. then being an assessor of the said rates and duties for E. aforesaid, to make improper assessments for the said rates and duties, and to omit to assess some of the inhabitants resident in E. aforesaid, and liable to be assessed to the said rates and duties, or some or one of them, for the year commencing on the fifth day of April, in the year of our Lord one thousand seven hundred and ninety-nine; and the said W. N. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did, in pursuance of such incitement and solicitation as aforesaid, make improper assessments for the said rates and duties for E. aforesaid, and did then and there omit to assess some of the said inhabitants of E. aforesaid, then residing there, and liable to be assessed to the said rates and duties, or some or one of them, he the said B. intending thereby to defraud his said majesty of the several rates and duties aforesaid, in contempt, &c. to the evil example, &c. and against the peace, &c. [*Conclusion of information as ante, 6.*]

That Joseph Blackburn, late of, &c. and Thomas Wainwright, late of, &c. on, &c. with force and arms, at, &c. feloniously did fraudulently cut, tear, and get off a certain stamp, *whereby a certain duty*, to wit, a duty of £2. payable by and under the statute in that case made and provided, was then and there *denoted to be paid*, from a certain piece of parchment, with intent to use such stamp for a certain other writing, in respect whereof certain duties, to wit, duties to the amount of £4. 10s. were then and there payable by and under a certain act of parliament made and passed in the 48th year of the reign of our said lord the now king, intituled, "An act for repealing the stamp duties on deeds, law proceedings, and other written or printed instruments, and the duties on legacies and successions to personal estate upon intestacies now payable in Great Britain, and for granting new duties in lieu thereof," contrary to the form of the statute, &c. and against the peace, &c.

On 12 Geo. 3. c. 48, for felony in cutting off stamps, with intent to put them upon other deeds (a).

And the jurors aforesaid, on their oath aforesaid, do further present, that the said J. B. and T. W. on, &c. with force and arms, at, &c. feloniously did fraudulently cut, tear, and get off a certain other stamp, *in respect whereof* a certain duty, to wit, a duty of £2. *had been payable* by and under the statute in that case made and provided, from a certain piece of parchment, with intent to use such impression of the said stamp for a certain other writing, chargeable with certain other duties, to wit, duties to the amount of £4. 10s. were then and there payable, by and under the said act made and passed in the 48th year aforesaid, contrary to the form, &c. and against the peace, &c.

Second count, varying from the first in the words in italics.

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(a) Since the 12 Geo. 3. c. 48., the 55 Geo. 3. c. 184. has been passed, the 7th section whereof enacts, that "if any person shall fraudulently cut, tear, or get off, or cause or procure to be cut, torn, or got off, the impression of any stamp or die which shall have been provided, made, or used in pursuance of this or any former act, for impressing or denoting any duty or duties under the care and management of the commissioners of stamps, or any part of such

duty or duties, from any vellum, paper, or parchment whatsoever, with intent to use the same, for or upon any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the duties thereby granted, the offender, and every person knowingly and wilfully aiding, abetting, or assisting him in committing such offence, shall be guilty of felony, and suffer death without benefit of clergy.

Third count,
varying from the
first only in the
words in italics.

And the jurors aforesaid, upon their oath aforesaid do further present, that the said Joseph Blackburn, and Thomas Wainewright, on, &c. with force and arms, at, &c. aforesaid, feloniously did fraudulently cut, tear, and get off, a certain other stamp, whereby a certain duty, to wit, a duty of £2. payable by and under the statute in that case made and provided, was then and there denoted to be paid, from a certain piece of parchment, with intent to use such stamp for a certain other writing, in respect whereof *a certain other such duty, to wit, another duty of £2. was* then and there payable by and under the said act made and passed in the 48th year aforesaid, contrary to the form of the statute in that case made and provided, and against the peace of our lord the king, his crown and dignity.

Fourth count,
like first, but
stating the parties to the indenture to which the stamp was intended to be affixed.

That the said defendants on, &c. with force and arms, at, &c. feloniously did fraudulently cut, tear, and get off a certain other stamp, whereby a certain duty, to wit, the duty of £2. payable by and under the statute in that case made and provided, was then and there denoted to be paid, from a certain piece of parchment, with intent to use such stamp for a certain other writing, that is to say, another writing purporting to be an indenture made between W. R. and S. S. H. of the first part, J. B. of the second part, C. S. of the third part, and J. C. of the fourth part, and to be dated the 29th day of May, in the year, &c. in respect whereof certain other duties, to wit, duties to the amount of £4. 10s. were then and there payable by and under the said act made and passed in the 48th year aforesaid, contrary to the form, &c. and against the peace, &c.

Fifth count like the second, but stating the parties to the deed as in the fourth count.

Sixth count like the third, stating the parties to the deed as in fourth.

Seventh count,
against J. B. for
getting off the
stamp as in first
count, and against
T. W. for aiding
and abetting him
(a).

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. B. on, &c. aforesaid, with force and arms, at, &c. aforesaid, feloniously did fraudulently cut, tear, and get off a certain other stamp, *whereby a certain duty to wit, a duty of £2. payable by and under the statute in*

(a) Vide the 55 Geo. 3. c. 184. s. 7, ante, 141, n. (a).

that case made and provided, was then and there denoted to be paid, from a certain piece of parchment, with intent to use such stamp for a certain other writing, in respect whereof certain other duties, to wit, duties to the amount of £4. 10s. were then and there payable by and under the said act made and passed in the 48th year aforesaid, contrary to the form, &c. and against the peace of, &c. And the jurors, &c. do further say, that the said T. W. then and there, to wit, on the said, &c. at, &c. aforesaid, feloniously, knowingly, and wilfully did aid, abet, and assist the said J. B. to commit the said last-mentioned offence, contrary to the form, &c. and against the peace, &c.

8th count, same as 2nd, against B. alone, and stating that W. aided him, as in the 7th. 9th count, same as 3rd, against B. stating that W. aided him as in 7th. 10th count, same as 4th, against B. stating that W. aided him as in 7th. 11th count, same as 5th, against B. and stating that W. aided him as in 7th. 12th count, like the 6th, with the same addition. 13th count, like the 1st, except in stating that the duty was "payable by and under the *statutes* in that case made and provided," instead of "by and under the *statute*, &c." 14th count, like the 2nd, with the same variation as the last. 15th count, same as 3rd, with the same variation. 16th count, same as 4th, with the same variation. 17th count, same as 5th, with the same variation. 18th, same as 6th, with the same variation. 19th, 20th, 21st, 22nd, 23rd, and 24th, were like the 7th, 8th, 9th, 10th, 11th, and 12th, with the same variation.

CHAPTER VIII.

FOR OFFENCES AGAINST PUBLIC JUSTICE.

Obstructing or not assisting Process—Escapes—Rescues—
 Contempts in Courts—Returning from Transportation—
 Taking Money for returning Stolen Goods—Compound-
 ing Felonies and other Offences—Barratry and Mainte-
 nance—Against Justices for Oppression and Miscon-
 duct—Against Coroners for Negligence and Miscon-
 duct—Against Inferior Officers for Negligence and Mis-
 conduct—Against Ministerial Officers for not serving—
 Disobedience of Orders of Justices—Extortion, &c. &c.*

FOR OBSTRUCTING OR NOT ASSISTING PROCESS.

For assaulting
 and obstructing a
 person aiding a
 constable in se-
 curing a party on
 a justice's war-
 rant (a)

[*COMMENCEMENT of indictment, as ante, 2.*] that
 C. D. late of, &c. on, &c. with force and arms, at, &c. did
 make an assault upon A. B. in the peace of God and our said
 lord the king, then and there being, and also then and there,
 at the request of one E. P. one of the constables of the said

(a) See other precedents, Trem. P. C. 273. 2 Stark. 544. Cro. C. C. 151. 1 Smith, 555. 5 East, 304. *As to the offence.* Any obstruction of lawful process, whether it be by active means, or the omission of a legal duty, is an indictable offence, 6 T. R. 635. 4 Bla. Com. 129. It is also an offence at common law to obstruct the execution of powers granted by a statute, and therefore the indictment in such case, need not conclude "contrary to the form of the statute in such case made and pro-

vided," Dougl. 445. In cases of treason or felony, the party opposing, becomes *particeps criminis*, that is, an accessary in felony, and a principal in treason, 4 Bla. Com. 129. Formerly, the great obstruction to arrests was the multitude of privileged places, which are all now abolished, and the opposing process therein is highly penal, by 8 & 9 W. 3. c. 27. 9 Geo. 1. c. 28, and 11 Geo. 1. c. 22, which enact, that persons opposing the execution of any process in the places pretended to be privileged within

* It has been thought advisable to arrange Prosecutions for Perjury a distinct Chapter.

parish of —, and of G. H. aiding and assisting the said E. F. and G. H. in the due and lawful execution of a certain warrant in writing, then and there made and directed to them, the said E. F. and G. H. under the hand and seal of I. K. clerk, then and there, and at the time of making such warrant,

the bills of mortality, or abusing any officer in his endeavours to execute his duty therein, so that he receives bodily harm, shall be guilty of felony, and transported for seven years; and persons in disguise joining in any riot or tumult on such account, or opposing any process, or assaulting or abusing any officer executing or endeavouring to execute the same, shall be guilty of felony, without benefit of clergy, 4 Bla. Com. 129. As to the offence of obstructing revenue officers, see Index, tit. Customs and Excise, ante. In order to make it illegal to obstruct, or refuse to aid a peace officer in securing a party whom he attempts to arrest, it is necessary that the arrest itself should be lawful, and this must appear from the indictment itself, for if it be otherwise, even a forcible resistance may be defended; as any one may interfere to prevent an illegal caption, doing no more than is necessary for that purpose, 5 East, 308. 1 Smith, 555. And see also 2 Lord Raym. 1296, 1574. 9 Harg. St. Tr. 112. Holt, 485. 11 Mod. 242. 2 Stra. 882. Styles, 469. Kel. 136. Foster, 135, 312, 314. 1 Hale, 465, ante, vol. i. 61. And it should seem that a constable cannot arrest for a mere breach of the peace, unless committed in his view, Hawk. b. 2. c. 13. s. 8. Cro. Eliz. 375. 2 Esp. Rep. 540. 2 Hale, 14. 1 Esp. Rep. 294, ante, vol. i. 23. As to the cases in which, and the parties by whom, an arrest on a criminal account, may be made, see at large, vol. i. 12 to 31. But where a prisoner is in custody of known officers, no other person ought to interfere; and the officers may detain any by whom they are obstructed, Peake, N. P. 90. *As to the indictment.* It must show for what cause, and on what proceeding, and by what officer the defendant was about to be arrested, or was in custody, 5 East, 304. 2 Stra. 1226; and see the precedents cited above. The mode of obstruction should also be shewn, 2 Sess. Cas. 31. And, in an indictment for not aiding, it should be averred, that the party called upon to assist the officer was informed of his official character. It may be advisable in the first count of an indictment of this nature, to begin by stating the issuing of the warrant or other process, and the delivery of it to the officer, and the attempt to arrest, or other proceedings, and then to describe the defendant's obstruction. But it is not necessary to state that the party to be arrested was guilty of any offence, or owed any debt, or that any affidavit of debt was made, 3 T. R. 185. *As to the evidence.* The assault should be proved, as in common cases. The regular proof of a party being a constable, is by production and proof of his appointment, and swearing at the court leet, or by justices of the peace; see 13 & 14 Car. 2. c. 12. s. 15. 2 Hawkins, b. 2. c. 10. s. 57. Stra. 1149. 1 Bac. Ab. 439; but it is suffi-

being one of the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county of Hertford, and whereby, after reciting, &c. [*here set forth the recital of the warrant*], he the said I. K. commanded them the said E. F. and G. H. to take and arrest the body of L. M. late of the parish of, &c. and to have him the said L. M. before him the said I. K. or some other of his majesty's justices of the peace in and for the said county of Hertford, to answer, &c. and to be further dealt with according to law; and the said C. D. with force and arms, then and there beat, bruised, and ill treated the said A. B. and then and there forcibly and unlawfully did hinder, oppose, and obstruct him the said A. B. so then and there being, aiding and assisting the said E. F. and the said G. H. as aforesaid, in and from aiding and assisting them, as he otherwise lawfully could and would have done, and other wrongs to the said A. B. then and there did, in contempt of our said lord the king and his laws, to the great hindrance of justice, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. [*Second count for a common assault, as post, see Index, tit. Assault.*]

For misdemeanor in assaulting a deputy gaoler in the execution of his office.

[*Commencement of indictment, as ante, 2.*] That C. D. late of, &c. labourer, on, &c. with force and arms, at, &c. aforesaid, in and upon one A. B. then and there being deputy keeper of his majesty's gaol of —, and having the custody of divers persons confined in the said gaol, and then and there being in the due execution of his said duty and office of deputy keeper as aforesaid, did make an assault, and him the said A. B. did beat, bruise, wound, and ill treat, so that his life then and there was greatly despaired of, and other wrongs to the said A. B. then and there did, to the great damage of the said A. B. and against the peace, &c.

cient to prove that the constable acted in that character without proof of appointment, 4 T. R. 366. Leach, C. L. 585. 1 East, P. C. 315. 3 Campb. 432. 2 Campb. 513. Wightw. 67. In an indictment, however, under Lord Ellenborough's act, for cutting and maiming, &c. persons assisting a sheriff's officer, the writ and the warrant, made out by the officer,

must be produced, Holt, C. N. P. 593. *The punishment.* The obstructing officers apprehending on any account less than felony, is a misdemeanor, punishable with fine and imprisonment; and by 3 Geo. 4. c. 114, the court may, at their discretion, award the punishment of hard labour, in lieu of, or in addition to, the punishment of fine and imprisonment.

[*Commencement of indictment, as ante, 2.*] That the mayor and senior bailiff of the town and county of the town of Pool, the judges of the weekly court of record of the said town and county, on, &c. at, &c. by their writ issued out of the said court, bearing date, &c. directed to W. C. and J. Brown, then and there being serjeants at mace of the said town and county, and officers and ministers of the same court, did command them to take B. W. if he should be found in their bailiwick, and keep him safely, &c. so that they might have his body before the mayor, &c. on, &c. to answer J. S. in a plea of trespass on the case, which same writ, on, &c. at, &c. within the jurisdiction of the said court was delivered to the said J. Brown, then and there being one of the serjeants at mace of the said town and county, and such officer and minister of the said court as aforesaid, to be executed in due form of law, by virtue of which said writ, the said J. B. afterwards, to wit, on, &c. at, &c. at the town and county aforesaid, and within the jurisdiction of the said court, then and there being such officer and minister of the said court as aforesaid, was proceeding to arrest the said B. W. according to the exigency of the said writ, and that A. B. (the defendant) late of, &c. labourer, with divers other persons whose names are to the jurors aforesaid as yet unknown, afterwards, to wit, on, &c. with force and arms, in the town and county aforesaid, and within the jurisdiction of the said court, in and upon the said J. B. then and there being one of the serjeants at mace and one of the officers and ministers of the said court as aforesaid, and in the due execution of his said office, did make an assault, and did then and there imprison him, and keep and detain him in prison for a long time, to wit, for the space of — then next following, and that the said A. B. and the said other persons, whose names are unknown, with force and arms, &c. did then and there violently prevent the said J. B. from arresting the said B. W. as by the same writ he was commanded, and other wrongs to the said J. B. then and there did, in contempt of our said lord the king and his laws, to the great hindrance of justice, to the evil example, &c. and against the peace, &c.

For an assault on a serjeant at mace, and preventing him from arresting a person on process in an inferior court (a).

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(a) See notes to the precedent, ante, 145. The form in 5 East, 304. 1 Smith's Rep. 555, was held insufficient, for not showing that the person assaulted was an officer of the court.

For misdemeanor in obstructing the execution of a warrant made by two justices, by seditious words and promises of indemnity (a).

[Commencement of indictment as ante, 2.] That John lord Lovelace, baron of Hurley, in the parish of Hurley, in the county of Berks, being a person disaffected towards our said lord the now king and his government within this kingdom of England, and contriving, endeavouring, and unlawfully, maliciously, factiously, and seditiously intending to vex, molest, and disturb the peace and common tranquillity of this kingdom of England, and to bring into hatred and contempt our most serene lord the now king and his kingdom and government, and for creating false opinions and suspicions in the people and subjects of our said lord the king, of and concerning the government and administration of our said lord the king, and of the royal power and undisputed prerogative of our said lord the king, within this kingdom of England, he the said John lord Lovelace, for performing, perfecting, and effecting his said most wicked contrivances and intentions, on, &c. at, &c. with force and arms, &c. unlawfully, unjustly, contemptuously, maliciously, factiously, and seditiously, opposed and prevented the execution of a certain warrant in writing, duly made under the hands and seals of F. P. esquire, and R. P. esquire, then and still being justices of our said lord the now king, assigned to keep the peace of the said lord the king, in and for the county of Berks aforesaid, and also to hear and determine divers felonies, trespasses, and other offences in the same county of Berks committed, bearing date the 28th day of January, in the 3d year of the reign, &c. directed to the then constables and tithing-men of the parish of Upton in the county of Berks aforesaid, and either of them, and also to the churchwardens and overseers of the parish of H. in the county of Berks aforesaid, and all and singular the several and respective inhabitants of the parish aforesaid, in the county of B. aforesaid, and either of them, for the settlement of W. R. then lately an inhabitant of the parish of Hurley aforesaid, Catharine his wife, and a male child of the said William and Catharine, within the parish of Hurley aforesaid, in the county of Berks aforesaid; and then and at divers other times between the said time and the 11th day of February then next following, with force and arms, &c. hindered and prevented W. G. then and still being churchwarden of the parish of Hurley aforesaid, in the county of Berks aforesaid, and one R. B. then and still

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being an inhabitant within the parish aforesaid, and divers inhabitants and parishioners of the same parish, then and still dwelling, and having and keeping a mansion-house within the same, from complying with the warrant aforesaid, and then and there maliciously, factiously, and seditiously excited, encouraged, and abetted the said W. G. and divers others, then inhabitants and parishioners of the same parish, to oppose and resist the warrant aforesaid, and the execution of the same. And that the aforesaid J. lord L. in order further to perform, perfect, and effect his malicious and seditious intentions and designs aforesaid, in a certain discourse of and concerning the warrant aforesaid, and the execution thereof, and of and concerning the said justices of the peace of our said lord the king, and concerning the authority of the same justices of the peace of our said lord the king, on, &c. at, &c. aforesaid, in the presence and hearing of divers officers and other subjects of our said lord the king, then and there being, falsely, maliciously, and unlawfully, contemptuously, and seditiously spoke, uttered, declared, and affirmed, and with a loud voice published, that he (meaning the said John lord L.) did not value the said warrant more than the dirt of his shoes, and that the said warrant should not be obeyed; and the said John lord L. then and there, in the presence of the said W. G. further said and asserted, that if he the said W. G. would disobey and would not obey the warrant aforesaid, he the said lord L. would keep harmless and indemnify the said W. G. then churchwarden of the parish of Hurley aforesaid, and the rest of the inhabitants of the parish of Hurley aforesaid, in the county of Berks aforesaid, although it should cost him the said lord L. 500*l.*; to the derogation, great damage, diminution, and prejudice of our said lord the now king, and his prerogative, in very great contempt of our said lord the king and his laws, and the aforesaid power and authority of the said F. P. and R. P. the justices of the peace of our said lord the king, under the said lord the king, in diminution and contempt of the authority and power of our said lord the king, to the evil example of all others, and against the peace of our said lord the now king, his crown and dignity, &c.

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[*Commencement as ante*, 2.] That at the assizes holden for the county of Stafford, on, &c. at, &c. before the honorable Sir George Wood, knight, one of the barons of the Exchequer of our said lord the king, and Samuel Marshall, serjeant at law, justices of our said lord the king, assigned to take the

Against an attorney for a plaintiff in a cause for writing a letter to defendant's attorney, who had obtained a verdict on the evidence

of his son, threatening to indict the son for perjury, unless defendant gave up the benefit of the verdict.

assizes in the said county of Stafford, according to the form of the statute in such case made and provided, a certain issue, duly joined in the court of our said lord the king of the Bench at Westminster, between one J. C. and one B. C. in a certain action in which the said J. C. was plaintiff, and the said B. C. was defendant, came on to be tried in due form of law, and was then and there tried by a certain jury of the country in that behalf duly sworn and taken between the parties aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that upon the trial of the said issue so joined between the parties aforesaid, one T. C. a son of the said B. C. appeared as a witness for and on the behalf of the said B. C. in the action above mentioned, and was duly sworn and gave evidence to and before the said jurors so sworn to try the said issue as aforesaid, as such witness as aforesaid, and such proceedings were thereupon had in and upon the trial of the said issue, that the said jurors so sworn to try the said issue as aforesaid, gave their verdict upon that occasion for the said B. C. so being such defendant as aforesaid. And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, that one P. W. and one T. W. had been and were before and at and after the trial of the said issue, employed and engaged as attornies of and for the said B. C. in and about the defence of the said action. And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, that one A. W. late of, &c. gentleman, at and upon the trial of the said issue, was employed and engaged as the attorney of the said J. C. as such plaintiff as aforesaid; and that the said A. W. being an evil-disposed person, and wickedly and corruptly intending to deter the said B. C. from taking the benefit of the said verdict, and induce him wholly to forego and relinquish all the advantages and consequences of the said verdict, and thereby to prevent and obstruct the due execution of the law in that behalf, upon, &c. with force and arms, at, &c. aforesaid, did send to the said B. W. and T. W. then and there being employed and engaged as the attornies of and for the said B. C. a certain letter in writing, directed to the said P. W. and T. W. (by the names and description of Messrs. Walthall and Ward, attornies at law) of the tenor and effect following, (that is to say) "Gentlemen, Capper *v.* Coombe, (meaning the cause or action above mentioned, in which the said J. C. was the plaintiff, and the said B. C. was the defendant,) as, upon a thorough investigation of the facts, with the full proof I have in support

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of them, and on comparing those facts with Mr. Thomas Coombe's evidence, (meaning the evidence so given by the said T. C. as such witness as aforesaid,) on which you obtained your verdict, (meaning the verdict so given in favour of the said B. C. as aforesaid,) in this cause, (meaning the said cause in which the said J. C. was the plaintiff, and the said B. C. was the defendant,) I am bound, however reluctantly, to believe that he (meaning the said T. C.) has committed wilful and corrupt perjury, I have now only to inform you (meaning the said P. W. and the said T. W.) as the defendant's attornies, (meaning the attornies of the said B. C.) that if the defendant (meaning the said B. C.) attempt to avail himself of his verdict, I shall think it my duty to follow my instructions, and commence a prosecution against Mr. Thomas Coombe, (meaning the said T. C.) I was unwilling at the time of the trial to believe that a young man who ought to be so respectable as the defendant's son, (meaning the said T. C. the son of the said B. C.) could so far forget his character, but my subsequent information puts the matter out of all doubt. I will not dissemble my strong repugnance to a measure of this kind, aware as I am of the ruinous consequences to the object of it, and nothing but the defendant's (meaning the said B. C.'s) obstinacy shall compel me to adopt it; if, therefore, he (meaning the said B. C.) will relinquish all benefit of his verdict, in other words, if he (meaning the said B. C.) will place the plaintiff (meaning the said J. C.) in the same situation in which he would have been, but for the false evidence of his son, (meaning the said T. C.) the young man, (meaning the said T. C.) may yet have an opportunity of preserving his character from the infamy of a conviction in open court, of the crime of perjury; waiting your reply, I am, gentlemen, your most obedient servant, Alexander Wilson. Newcastle, 14th April, 1812." With intent then and there to extort and procure from the said B. C. a relinquishment of all benefit of the said verdict, for the purpose of preventing the said prosecution of the said Thomas Coombe, in the said letter alleged to be intended, from being commenced, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. [*Other counts, treating the letter as a libel on the son.*]

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[*Commencement as ante, 2.*] That on, &c. at, &c. one — For not aiding a headborough who Knowles was lawfully possessed of a certain dwelling-house, called upon de-

feudant to assist in securing a prisoner who was in custody for a breach of the peace, and attempting to escape.

situate and being in the parish of, &c. in the hundred of Walesbone, in the county of Sussex, and that the said — Knowles being so possessed thereof, one — Jackson, on, &c. aforesaid, to wit, at, &c. aforesaid, entered, and came into the said dwelling-house, and then and there, with force and arms, made a great noise and disturbance therein, and then and there assaulted, insulted, abused, and ill-treated the said — Knowles and his family in the said dwelling-house, in breach of the peace of our said lord the king. And the jurors, &c. do further present, that one C.W. then and there being one of the headboroughs of and for the hundred of W. aforesaid, in the county aforesaid, and in the due execution of his said office, then and there also being, and then and there also seeing and observing upon *his own view* the said — Jackson, then and there with force and arms so breaking and disturbing the peace of our said lord the king, and misbehaving himself in manner aforesaid, he the said C.W. according to the duty of his said office, as headborough, as aforesaid, did then and there arrest and take the said — Jackson, in order to prevent and restrain him from any further continuing to make the said disturbance and breach of the peace, and to carry the said — Jackson before some justice or justices of our said lord the king, assigned to keep the peace in and for the said county of Sussex, to answer the premises, and to be dealt with according to law for his said offence, and then and there had the said — Jackson in his custody on that occasion. And the jurors, &c. aforesaid, do further present, that the said — Jackson did then and there, with force and arms, violently, forcibly, and unlawfully resist, and obstruct the said C.W. in the due execution of his said office, and that he the said C.W. being such headborough as aforesaid, thereupon did then and there, on, &c. aforesaid, at, &c. aforesaid, in his proper person, apply to one T. L. late of the said parish of, &c. aforesaid, in, &c. aforesaid, and he the said T. L. being then and there present, and in his majesty's name did then and there, and on, &c. aforesaid, at, &c. aforesaid, charge and require the said T. L. to aid and assist him in the preservation of the peace of our said lord the king, and for the better securing the said — Jackson, so as aforesaid, in custody for the cause aforesaid, in order to his being brought to justice, and dealt with according to law, for the same offence; and although the said T. L. then and there well knew that the said C.W. then was such headborough as aforesaid, and that he was so in the due execution of his said

office, and had so apprehended and had in his custody the said — Jackson for the cause aforesaid; yet the said T. L. not regarding his duty in that behalf, on, &c. aforesaid, at, &c. aforesaid, with force and arms, unlawfully, obstinately, and contemptuously did neglect and refuse to aid and assist the said C. W. for the purpose and on the occasion aforesaid, in the manner he the said T. L. was charged and requested to do as aforesaid, or in any other manner whatsoever, contrary to his duty in that behalf, in manifest contempt of our said lord the king and his laws, to the great hindrance of justice, to the evil example, &c. and against the peace, &c. And the jurors, &c. further present, that heretofore (to wit) on, &c. aforesaid, at, &c. aforesaid, the said C. W. then and there being such headborough as aforesaid, and in the due execution of his said office, then and there also being, the said — Jackson, with force and arms, did then and there violently, forcibly, and unlawfully resist and obstruct the said C. W. in the due execution of his said office, and he the said C. W. being such headborough aforesaid, thereupon did then and there, on, &c. aforesaid, at, &c. aforesaid, in his proper person, apply to the said T. L. being then and there present as aforesaid, and in his majesty's name, did then and there, on, &c. in, &c. aforesaid, cause and require the said T. L. to aid and assist him in the preservation of the peace of our said lord the king, and for the securing of the said Jackson, still then and there continuing to resist and obstruct the said C. W. in the due execution of his said office, in order to his being dealt with according to law, yet the said T. L. not regarding his duty in this respect, and then and there well knowing the said C. W. then was such headborough as aforesaid, and so in the due execution of his said office as aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, unlawfully, obstinately, and contemptuously did neglect and refuse to aid and assist the said C. W. for the purpose and on the occasion aforesaid, in the manner he the said T. L. was charged and requested to do as aforesaid, or in any other manner whatever, contrary to his duty in that behalf, in manifest contempt of our said the king and his laws, to the great hindrance of justice, to the evil example, &c. and against the peace, &c. his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore (to wit) on, &c. aforesaid, at, &c. aforesaid, the said — Jackson

Second count.

Third count (a).

(a) This count seems too general.

being then and there in the lawful custody of the said C.W. as such headborough as aforesaid, for a breach of the peace by him the said Jackson committed, he the said C.W. being then such headborough as aforesaid, and in the due execution of his office, then and there also being, the said — Jackson did then and there, with force and arms, violently, forcibly, and unlawfully resist and obstruct the said C.W. in the due execution of his said office, and attempt to escape from his lawful custody, and go at large, contrary to the will of the said C.W. And that he the said C.W. being such headborough as aforesaid, thereupon did then and there, on, &c. aforesaid, at, &c. aforesaid, in his proper person, apply to the said T. L. he the said T. L. being then and there present, and in his majesty's name did then and there, to wit, on, &c. aforesaid, to wit, at, &c. aforesaid, charge and require the said T. L. to aid and assist him the said C.W., as such headborough as aforesaid, in the preservation of the peace of our said lord the king, and for the securing the said — Jackson, and for preventing the said — Jackson from effecting his escape from and out of the lawful custody of him the said C.W., he the said C.W. being then and there such headborough as aforesaid, and in the due execution of his said office, in conveying the said — Jackson to a place of safe custody, to be dwelt with according to law. Yet the said T. L. then and there well knowing that the said C.W. then was such headborough as aforesaid, and so in the due execution of his said office, and not regarding his duty in this respect, afterwards, to wit, on, &c. aforesaid, to wit, at, &c. aforesaid, with force and arms, unlawfully, obstinately, and contemptuously did neglect, and refuse, to aid and assist he said C.W. for the purpose, and on the occasion aforesaid, in the manner he the said T. L. was charged and required to do as aforesaid, or in any other manner whatever, contrary to his duty in that behalf, whereby the said — Jackson did then and there (to wit) on, &c. aforesaid, at, &c. aforesaid, effect his escape from and out of the lawful custody of, and against the will of the said C.W. he the said C.W. being then and there such headborough as aforesaid, and in the due execution of his said office, and did go at large, in manifest contempt of our said lord the king, and his laws, to the great hindrance of justice, to the evil example, &c. and against the peace of, &c.

Against a constable for refusing, contrary to verbal direction

That on, &c. at, &c. divers disorderly persons, to the number of twenty or more, to the jurors aforesaid as yet unknown, then and there did unlawfully, riotously, and routously as-

semble and meet together, to disturb the peace of our said lord the king, and being then and there so unlawfully, riotously, and routously assembled and met together, did commit divers outrages, to the great terror of all the liege subjects of our said lord the king, as well inhabiting and residing, as passing and repassing there, and against the peace of our said lord the king, his crown, and dignity, and that, &c. J. H. then being one of the constables of the said parish (*b*), did then and there apprehend and take, and cause to be apprehended and taken, one D. S. late of W. in the county aforesaid, labourer, being one of the principal persons, so as aforesaid, unlawfully, riotously, and routously assembled and gathered together, to disturb the peace of our said lord the king as aforesaid, and the said D. S. in the custody of him the said J. H. for the cause aforesaid, then and there had, and that afterwards, to wit, on, &c. at, &c. he the said J. H. the constable aforesaid, by the order and direction of E. M. esquire, then and yet being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of M. and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, did, in his own proper person, apply to T. L. then of the said parish of A. in the county aforesaid, blacksmith, and then being also one of the constables of the said parish, and by such order and direction, he the said J. H. did, in his majesty's name, then and there charge and require the said T. L. forthwith to go along with him the said J. H. to aid and assist him in the preservation of the peace of our said lord the king, and for the better securing of the said D. S. so as aforesaid in custody for the cause aforesaid, in order to his being brought to justice and dealt with according to law, for the same, yet the said T. L. so as aforesaid, being one of the constables of the said parish as aforesaid well knowing the premises, but not regarding the duty of his same office, afterwards, to wit, on the said, &c. at, &c. unlawfully, obstinately, and contemptuously, did neglect and refuse to aid and assist the said J. H. for the purpose and on the occasion aforesaid, in the manner he the said T. L. was charged and requested to do as aforesaid, or in any other

of a justice, to assist another constable in securing a person who had offended, &c. (*a*)
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(*a*) Cro. C. C. 151. 2 Stark. 579.

(*b*) *Quare*, if it should not state that he had view of the

breach of the peace, as in the precedent, ante, 151; see ante, vol. i. 23.

manner whatsoever, contrary to his duty in that behalf, in contempt, &c. to the great hindrance, &c. and against the peace, &c.

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For felony, on
43 Geo. 3. c. 58,
for assaulting,
&c. with intent to
obstruct the ap-
prehension of de-
fendant's having
committed a fel-
ony (a).

That Richard Hayward, late of, &c. otherwise called Reginald Harwood, late of the same, labourer, on, &c. with force and arms, at, &c. aforesaid, two bolsters, of the value of five shillings, and two pillows, of the value of five shillings, of the goods and chattels of Richard Crabtree, then and there being found, feloniously did steal, take and carry away, against the

(a) This indictment was settled by an eminent crown lawyer, and the defendant was convicted and executed. See the next precedent, and other precedents on this statute, post, tit. Assault. *As to the offence.* The 43 Geo. 3. c. 58. s. 1, enacts, that "if any person shall wilfully, maliciously, and unlawfully shoot at any of his majesty's subjects, or shall wilfully, maliciously, and unlawfully present, point, or level any kind of loaded fire-arms, at any of his majesty's subjects, and attempt, by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons, or shall wilfully, maliciously, and unlawfully stab or cut any of his majesty's subjects, with intent in so doing, or by means thereof to murder or rob, or to maim, disfigure, or disable such his majesty's subject or subjects, or with intent to do some other grievous bodily harm to such his majesty's subject or subjects, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her, or their accomplices, for any offences for which he, she, or they may respectively be liable by law to

be apprehended, imprisoned, or detained, he shall be deemed guilty of felony, without benefit of clergy." See the objects of this act, Holt, C. N. P. 472. It should seem, that the words "some other grievous bodily harm," in the act, must be construed to extend to such wounds only as are inflicted on a vital part, Id. 469. If a cutting or wounding, &c. take place, in an attempt to apprehend the prisoner, without a due notification of the warrant or authority by which the person acts, it does not fall within the meaning of the act, as it is not a wilful resistance of a lawful apprehension, 3 Campb. 68. Attempting to rescue a person convicted of murder whilst proceeding to execution, is felony, and the offender is punishable with death, 25 Geo. 2. c. 37. s. 9. By the 1st and 2nd Geo. 4. c. 88. s. 2, the assaulting, beating, or wounding any constable, with intent to obstruct the apprehension or detainer of a felon; or if the felon himself shall do so, then, besides the ordinary punishment for a misdemeanor, the offender may, as the court shall think fit, be imprisoned for a term not exceeding two years, nor less than six months, with hard labour.

peace of our said lord the king, his crown, and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Richard Hayward, otherwise called Reginald Harwood, having so done and committed the felony aforesaid, in manner and form aforesaid, afterwards, to wit, on the said, &c. aforesaid, with force and arms, at, &c. aforesaid, in and upon B. C. a subject of our said lord the king, in the peace of God and our said lord the king, then and there being, feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain sharp instrument then and there feloniously, wilfully, maliciously, and unlawfully did strike, stab, and cut the said B. C. in and upon the head of him the said B. C. with intent in so doing, and by means thereof (*a*), to obstruct, resist, and prevent the lawful apprehension and detainer of him the said Richard Hayward, otherwise called Reginald Harwood, for the aforesaid felony and larceny, for which he the said Richard Hayward, otherwise called Reginald Harwood, the person so stabbing and cutting as aforesaid, was then and there liable by law to be apprehended, imprisoned, and detained, to the great damage of the said B. C. against the form of the statute, &c. and against the peace, &c. And the jurors

Second count.

aforesaid, upon their oath aforesaid, do further present, that the said Richard Hayward, otherwise called Reginald Harwood, on the said, &c. aforesaid, with force and arms, at, &c. aforesaid, in and upon the said B. C. a subject of our said lord the king, in the peace of God and our said lord the king, then and there being, feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain sharp instrument, then and there feloniously, wilfully, maliciously, and unlawfully did strike, stab, and cut the said B. C. in and upon the head of him the said B. C. with intent in so doing, and by means thereof (*a*), to obstruct, resist, and prevent the lawful apprehension and detainer of him the said Richard Hayward, otherwise called Reginald Harwood, the person so striking, stabbing, and cutting him the said B. C. as last aforesaid, for a certain felony and larceny then lately before committed by him the said Richard Hayward, otherwise called Reginald Harwood, that is to say, for feloniously stealing, taking, and carrying away two bolsters, of the value of five shillings, and two pillows, of the value of five shillings, of the goods and chattels of the said R. C. on the

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(*a*) In the next precedent here are inserted "wilfully, maliciously, and feloniously."

Third count.

same day, and in the year aforesaid, at the parish aforesaid, in the county aforesaid, for which he the said Richard Hayward, otherwise called Reginald Harwood, was then and there liable by law to be apprehended, imprisoned, and detained, to the great damage, &c. [*Conclusion as in first count.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Richard Hayward, alias Reginald Harwood, on the said, &c. aforesaid, with force and arms, at, &c. aforesaid, in and upon the said B. C. a subject of our said lord the king, and in the peace of God and our said lord the king, then and there being, feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain sharp instrument, then and there feloniously, wilfully, maliciously, and unlawfully did strike, stab, and cut the said B. C. in and upon the head of him the said B. C. with intent in so doing, and by means thereof, to obstruct, resist, and prevent the lawful apprehension and detainer of him the said Richard Hayward, otherwise called Reginald Harwood, for feloniously stealing, taking, and carrying away, certain goods and chattels of the said R. C. on, &c. aforesaid, at, &c. aforesaid, for which said offence, he the said Richard Hayward, otherwise called Reginald Harwood, the person so stabbing and cutting as last aforesaid, was then and there liable by law to be apprehended, imprisoned and detained, to the great damage, &c. [*Conclusion as*

Fourth count.

in first count.] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Richard Hayward, otherwise called Reginald Harwood, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, feloniously, wilfully, maliciously, and unlawfully, did stab and cut the said B. C. in and upon his head, with intent in so doing to resist and prevent the lawful apprehension and detainer of him the said R. H. otherwise called Reginald Harwood, for a certain felony then and there committed and done by him the said R. H. otherwise called R. H. for which he the said R. H. otherwise called R. H. the person so stabbing and cutting as last aforesaid, was then and there liable by law to be apprehended and detained, against the form of the statute, &c. and against the peace, &c.

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The like in another form, for cutting with intent to resist the lawful apprehension of the defendant for an offence, on 43 Geo. 3. c. 58. (a).

That C. D. late, of, &c. on, &c. with force and arms, at, &c. in and upon one A. B. a subject of our said lord the king, then and there being, feloniously, wilfully, maliciously and unlawfully did make an assault, and with a certain sharp instrument,

(a) See note to the precedent, ante, 155, note (a).

then and there feloniously, wilfully, maliciously and unlawfully did strike and cut the said A. B. in and upon the left hand of him the said A. B. with intent in so doing wilfully, maliciously, and feloniously to obstruct, resist, and prevent the lawful apprehension and detention of him the said C. D. for a certain offence, to wit, for the felonious stealing, taking, and carrying away of fifty pounds weight of sugar, of the value of fifty shillings, of the goods and chattels of the said A. B. before then feloniously stolen, taken and carried away by him the said C. D. to wit, at, &c. aforesaid, for which said offence he the said C. D. was then and there liable by law to be apprehended, imprisoned and detained, to the great damage of the said A. B. against the form of the statute, &c. and against the peace, &c. And the Second count. jurors, &c. that the said C. D. heretofore, to wit, on, &c. with force and arms, at, &c. aforesaid, in and upon the said A. B. feloniously, wilfully, maliciously, and unlawfully did make an assault with a certain sharp instrument, to wit, a knife, and then and there feloniously, wilfully, maliciously and unlawfully did strike and cut the said A. B. in and upon the left hand of him the said A. B. with intent in so doing feloniously, wilfully, maliciously and unlawfully to obstruct, resist, and prevent, the lawful apprehension and detention of him the said C. D. for a certain offence, to wit, for a felony, before then committed by him the said C. D. at, &c. aforesaid, for which said last-mentioned offence he the said C. D. was then and there liable by law to be apprehended, imprisoned, and detained, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. that the said C. D. heretofore, to wit, Third count. on, &c. aforesaid, with force and arms, at, &c. aforesaid, in and upon the said A. B. feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain sharp instrument then and there feloniously, wilfully, maliciously, and unlawfully did strike and cut the said A. B. in and upon the left hand of him the said A. B. with intent in so doing wilfully, maliciously, feloniously, and unlawfully to obstruct, resist, and prevent the lawful apprehension and detention of him the said C. D. for a certain offence before then committed by the said C. D. to wit, at, &c. aforesaid, for the committing of which said last-mentioned offence he the said C. D. was then and there liable by law to be apprehended, imprisoned, and detained, against the form of the statute, &c. and against the peace, &c. In and upon the said A. B. then and there being, Fourth count. wilfully, maliciously, and unlawfully did make an assault, and

Fifth count.

with a certain sharp and cutting instrument, to wit, a knife, did then and there feloniously, wilfully, maliciously, and unlawfully cut the said A. B. in and upon the left hand of him the said A. B. with intent in so doing wilfully, maliciously, feloniously, and unlawfully to disable him the said A. B. to the great damage of him the said A. B. against the form of statute, &c. and against the peace, &c. In and upon the said A. B. then and there being, feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain sharp and cutting instrument, did then and there feloniously, wilfully, maliciously, and unlawfully cut the said A. B. in and upon the left hand of him the said A. B. with intent in so doing wilfully, maliciously, feloniously, and unlawfully to do some grievous bodily harm to him the said A. B. against the form of the statute, &c. and against the peace, &c.

I. FOR ESCAPES—AGAINST PRISONER HIMSELF.

Indictment at common law, for escaping from a constable, being in custody under a warrant for horse stealing (a).

That A. B. late of, &c. yeoman, constable of our said lord the king, in and for the town of, &c. in the said county, on, &c. at, &c. within the town and constable-wick aforesaid, in the county aforesaid, did take and arrest one C. D. late of, &c. on suspicion of having committed a certain felony, in feloniously taking and carrying away one black gelding, the property of

(a) See other precedents, 1 Hale, 607. Hawk. b. 2. c. 18. Burn, J. Prison Breaking. Williams, J. Escape, III. Stark. 2d edit. 634. Cro. C. C. 188. 3 P. Wms. 500. *As to the offence.* See, in general, Hawk. b. 2. c. 18. 1 Hale, 609 to 612. 2 Inst. 589 to 592. The escape of the party before he is actually in gaol, is a misdemeanor punishable by fine or imprisonment, 4 Bla. Com. 129. This does not, however, seem to be felony, as it is excused by the natural love of freedom which all men possess, Haw. b. 2. c. 17. s. 5. *Breaking prison*, or conspiring so to do, seems, according to the best opinions, to have been felony at the common law, 1 Hale, 607. Hawk. b. 2. c. 18. The statute "*De frangentibus prisonam*," 1 Edw. 2. st. 1. enacts, "that none that breaketh prison shall have judgment of life or member for breaking prison only, except the cause for which he was taken and imprisoned did require such judgment if he had been convict thereon according to the law and custom of the realm." Every lawful restraint of liberty is a prison within this act, 1 Hale, 610. Hawk. b. 2. c. 18. s. 4. If the party is committed on a *capias* after indictment found for treason or felony, he is within the act though guiltless, 1 Hale, 610. So if on lawful *mittimus*,

E. F. of the value of —; and thereupon, he the said C. D. under the custody of him the said A. B. the constable aforesaid, was then and there brought before I. K. esquire, one of the justices of our said lord the king, assigned to keep the peace in

on just ground of suspicion for a felony actually committed by some one, 1 Hale, 610, 11. But if no felony were committed, nor indictment found—or if the mittimus be bad, and the suspicion groundless, he is not within the act, 2 Inst. 590. 1 Hale, 610, 11. Hawk. b. 2. c. 18. s. 7, 8. There must be a forcible escape to constitute a *breaking* and a mere escape *per jamaa aperta* will not be felony, 2 Inst. 590. It must be a breaking by the prisoner himself, or others by his procuring or privity, for if the gaol be broken by others, and he thereby escape, he will not be guilty of felony, but only of misdemeanor, 2 Inst. 589. 1 Hale, 611. If prison be set on fire by accident, or by others, the prisoner is not guilty if he escape to save his life, though he is if the fire was occasioned by him, 1 Hale, 611. If a man be committed for felony, it is still, as at common law, felony to break prison, 4 Bla. Com. 130. And it is so though the offence be created by statute, 1 Hale, 611. Hawk. b. 2. c. 18. s. 13. But the offence charged must be felony at the time of the breaking, and not become so at any subsequent period; as if after a dangerous wound given, for which the offender is taken into custody he escapes, and death subsequently ensues, he will not be guilty of a felonious escape, 1 Hale, 191. Hawk. b. 2. c. 18. s. 14. If he is charged with misdemeanor only it is no felony, even though the mittimus purport to be for a felonious of-

fence, 2 Inst. 590. 1 Hale, 609. Hawk. b. 2. c. 18. s. 15. Persons attainted breaking prison are within the meaning of the act, Hawk. b. 2. c. 18. s. 16. A party accused of treason does not become a traitor, but only a felon by breaking out, unless he liberate others with him. 2 Inst. 590. Hawk. b. 2. c. 18. s. 17. It is not felony for a party convicted of a clergyable felony to escape after judgment of transportation, 3 P. Wms. 439. 2 Sess. Cas. 264. Persons not within the act, breaking prison, are guilty of a high misdemeanor, and punishable by fine and imprisonment, Hawk. b. 2. c. 18. s. 21. A person committed as a rogue and vagabond under 23 Geo. 3. c. 88. who breaks gaol, and on being committed as an incorrigible rogue breaks gaol a second time, and then commits a new act of vagrancy as a rogue and a vagabond, may be indicted for *felony*, and transported under the vagrant act, 1 Leach, 396. *As to the Indictment.* In order to bring the offender within the statute it must set forth the whole of his case, so as to make it appear that he was lawfully in prison, and for such a crime as would require judgment of life or member, and it is not sufficient to state that he feloniously broke prison. It is usual to say that he was arrested on suspicion of a certain felony, to wit, for the death of one M. N. feloniously killed, and then to recite the effect of the mittimus.

the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and he the said I. K. by his warrant, directed to the said A. B. and others, did then and there command the said A. B. to carry and convey the said C. D. to the gaol of our said lord the king, at, &c. in the county aforesaid, there to be safely kept until he should be lawfully delivered from thence by due course of law, by virtue of which said warrant, he the said C. D. was then and there taken and detained by him the said A. B. and as he the said A. B. was conveying and carrying him the said C. D. to the gaol aforesaid, afterwards, to wit, on, &c. aforesaid, he the said C. D. at, &c. aforesaid, with force and arms, did feloniously break away and escape from and out of the custody of him the said A. B. the constable aforesaid, against the will of him the said A. B. and against the peace, &c.

Against a prisoner in custody for felony, for breaking out of gaol (a).

That C. D. late of, &c. on, &c. at, &c. aforesaid, was arrested, imprisoned, and detained in the gaol of our said lord the king, in and for the county of —, situate at, &c. for a certain felony by him committed, that is to say, for feloniously stealing, taking, and carrying away one black gelding, the property of A. B. of the value of —, and that he the said C. D. on, &c. at, &c. with force and arms, the aforesaid gaol of our said lord the king at, &c. aforesaid, feloniously did break, and thereby did then and there escape from and out of the said gaol, against the peace, &c.

Indictment at

common law, against two persons for escaping out of prison, and against a third for assisting them to escape when in custody for felony.

That on, &c. at, &c. G. F. and B. R. esquires, then being two of the justices of our said lord the king assigned to keep the peace of our said lord the king, in and for the said county; and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, in due form of law did make their warrant of commitment under their hands and seals, bearing date the same day and year aforesaid, directed (amongst other things) to the keeper of his majesty's gaol at Southwark, the same being a common gaol of our said lord the king in and for the said county of Surrey, situate in the parish aforesaid, by which said warrant of commitment, reciting, &c. [*Here set forth the warrant of commitment for*

(a) See form, Burn, J. Prison Breaking. Williams, J. Escape, III.

a felony], as by the said warrant more fully appears, by virtue of which said warrant of commitment, they the said S.F. W.M. T. J. and W. T. afterwards, to wit, on the said, &c. were conveyed, committed, and delivered to his majesty's said gaol at the parish aforesaid, in the borough aforesaid, in the county aforesaid, for the said cause in the said warrant of commitment mentioned and expressed, and were kept and detained therein, under the custody of H. A. then being keeper of the said gaol for the cause aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said T. J. and W. T. afterwards, to wit, on, &c. at, &c. aforesaid, then and there being in the custody of the said keeper of the said gaol, in the said gaol for the said cause in the said warrant above specified, with force and arms, against the will and without the licence and consent of the said keeper of the said gaol, unlawfully, voluntarily, and feloniously did escape and go at large, out of the said gaol from the custody of the said keeper of the said gaol. And the jurors, &c. that E. L. late of, &c. well knowing the premises, but being a person of an evil and wicked disposition, on the said, &c. with force and arms, at, &c. aforesaid, wilfully, feloniously, and against the will, and without the licence and consent of the said keeper of the said gaol of our said lord the king of the said county of Surrey, did aid, abet, comfort, and assist the said T. J. and W. T. so being in the said gaol as aforesaid, for the cause aforesaid, in making their said escape from the said gaol as aforesaid, against the peace, &c. And the jurors, &c. do further present, that afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, G. F. and B. R. then being two of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, in due form of law did make their warrant of commitment under their hands and seals, bearing date the same day and year last aforesaid, directed (amongst other things) to the keeper of his majesty's gaol of Southwark, in the said county, the same being the gaol of James Trotter, esquire, then being sheriff of the said county of Surrey, situate in the parish aforesaid, in the county aforesaid, by which said warrant of commitment, reciting, &c. [Here set forth the mittimus, as in first count.] By virtue of which said warrant, they the said S. F., W. M., T. J., and W. T. afterwards, to wit, on the said, &c. were conveyed,

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Second count.

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committed, and delivered to his majesty's said gaol, at, &c. aforesaid, for the said cause in the said warrant of commitment mentioned and expressed, and were kept and detained therein under the custody of H. A. then being officer and servant to the said sheriff, and keeper of the said gaol, for the cause aforesaid. And the jurors, &c. further present, that the said T. J. and W. T. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, then and there being in the custody of the said officer and servant to the said sheriff, and keeper of the said gaol, in the said gaol for the said cause in the said warrant above specified, with force, &c. against the will and without the licence and consent of the said J. T. and H. A., or either of them, unlawfully, voluntarily, and feloniously did escape and go at large out of the said gaol, from the custody of the said H. A. so being officer and servant to the said sheriff, and keeper of the said gaol as aforesaid. And the jurors, &c. further present, that the said E. L. well knowing the premises, but being a person of an evil and wicked disposition, on, &c. aforesaid, with force and arms, at, &c. aforesaid, willingly and feloniously, against the will and without the licence and consent of the said J. T. and H. A. did aid, abet, comfort, and assist the said T. J. and W. T. so being in the said gaol aforesaid, for the cause aforesaid, in making their said last-mentioned escape from the said gaol as aforesaid, against the peace, &c.

Against a prisoner confined in gaol on a *ca. sa.* issued out of C.B. and the sheriff's warrant to the gaoler, for attempting to break the gaol in order to make his escape (a).

That on, &c. at, &c., T. S. esquire, then being sheriff of the county aforesaid, did in due form of law make his certain warrant under his hand and seal, bearing date the same day and year aforesaid, and directed the same warrant to the keeper of the gaol of the said county, and also to J. C. and J. E. his bailiffs, and thereby, and by virtue of a certain writ of our sovereign lord the king, to him the said sheriff directed, he the said sheriff did command them, the said keeper of the gaol aforesaid, and also the said bailiffs and every of them, jointly and severally, that they, some or one of them, should take J. L. if he should be found in his the said sheriff's bailiwick, and him the said J. L. safely keep, so that he the said sheriff might have his body before the justices of our said lord the king, at Westminster, in eight days of Saint Hilary, to satisfy

(a) See precedent, Cro. C. C. may be advisable to add a 2nd edit. 188, *semble*, that it count stating the writ of *ca. sa.*

R. S. as well of a certain debt of twenty pounds, which the said R. S. had recovered against him, in our lord the king's court, before his justices at Westminster, as also of five pounds, which in our said lord the king's same court, were awarded to the said R. S. for his damages, which he had sustained by reason of detaining the said debt, whereof the said J. L. was convicted, and whereof they were not to fail at their peril, as by the same warrant more fully appears. And the jurors, &c. that afterwards, to wit, on, &c. at, &c. and within the bailiwick of the said sheriff, the aforesaid J. L. was arrested, and conveyed into and kept and detained in the gaol of our said lord the king, of and for the county aforesaid, situate and being at the parish aforesaid, in the county aforesaid, according to the command of the aforesaid writ and warrant, for the cause in the aforesaid warrant expressed, there to remain until he should thence be discharged by due course of law. And the jurors aforesaid, &c. that the said J. L. late of the parish aforesaid, in the county aforesaid, labourer, afterwards, to wit, on, &c. at, &c. aforesaid, (then and there being in the custody of L. S. keeper of the gaol of our lord the king, of the county aforesaid, for the cause in the writ and warrant aforesaid specified) with force and arms unlawfully, wilfully, and injuriously did attempt to break the aforesaid gaol, and to escape and go at large, where he would (by then and there cutting and sawing two iron bars of the said gaol, and also by then and there breaking, cutting, and removing a great quantity of stone, parcel of the wall of the aforesaid gaol) to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

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II. FOR ESCAPES—AGAINST THIRD PERSONS.

That heretofore, to wit, on, &c. at, &c. F. N. esquire, then being one of the justices of our said lord the king, assigned, &c. [*as ante*, 160,] in due form of law, did make

Indictment for felony, on 16 G. 2. c. 31. s. 2, for conveying files into a prison in order to facilitate the escape of a prisoner (a).

(a) See other precedents, Cro. C. C. 8th edit. 397. 6. Cro. C. A. 505. 2 Leach, 662. 1 Leach, 363. Stark. 2d edit. 639. 637. 629. *As to the offence*

in general, see Hawk. b. 2. c. 18; as to breaking prison, Hawk. b. 2. c. 19, 20, 21, as to escapes and rescue. The offence of assisting a felon in

his warrant of commitment under his hand and seal, bearing date the same day and year aforesaid, directed (amongst other things) to the keeper of his majesty's gaol in Stafford, (the same being the common gaol of our said lord the king, in and for the county of Stafford aforesaid, situate in the parish and borough aforesaid), by which said warrant of commitment the

making an actual escape is a felony at common law, but not an ineffectual assistance, 2 Leach, 671. But the 16 G. 2. c. 31, enacts, that "if any person shall, by any means whatsoever, be aiding or assisting to any prisoner to attempt to make his or her escape from any gaol, although no escape be actually made, in case such prisoner then was attainted or convicted of treason, or any felony, except petty larceny, or lawfully committed to, or detained in, any gaol for treason or any felony, except petty larceny, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall be transported to one of his majesty's colonies or plantations in America, for the term of seven years; and in case such prisoner then was convicted of, committed to, or detained in any gaol for petty larceny, or any other crime, not being treason or felony, expressed in the warrant of commitment or detainer as aforesaid, or then was in gaol upon any process whatsoever, for any debt, damages, costs, sum or sums of money, amounting in the whole to the sum of one hundred pounds, every person so offending as aforesaid, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of a misdemeanor, for which he

or she shall be liable to a fine and imprisonment." The *second section* further provides, "that if any person shall, after the same day, convey, or cause to be conveyed into any gaol or prison, any vizer or other disguise, or any instrument or arms proper to facilitate the escape of prisoners; and the same shall deliver, or cause to be delivered to any prisoner in any such gaol, or to any other person there, for the use of any such prisoner without the consent or privity of the keeper or under-keeper of any such gaol or prison; any such person, although no escape or attempt to escape be actually made, shall be deemed to have delivered such vizer or other disguise, instrument, or arms, with an intent to aid and assist such prisoner to escape, or attempt to escape, and in case such prisoner then was attainted or convicted of treason, or any felony, except petty larceny, or lawfully committed to, or detained in, any such gaol for treason, or any felony, except petty larceny, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall in like manner be deemed and adjudged guilty of felony, and shall be transported to one of his majesty's colonies or plantations in America, for the term of seven years; but in case the prisoner to whom or for whose use such vizer or disguise, instrument or arms,

said justice of the peace did require the said keeper to receive into his custody the body of one J. L. who was therewith sent to him the said keeper (the said J. L. having been brought before him the said justice, and charged upon the oath of S. S. Esq. and J. S. with having feloniously stolen, taken, and carried away from and out of a barn of him the said S. S. situate at T. in the said county of Stafford, a certain quantity of barley, of the value of ten shillings, the property of him the said S. S.) and him safely keep until he should be discharged from thence by due course of law, as by the said warrant more fully appears, by virtue of which said commitment he the said J. L. afterwards, to wit, on the same day and year aforesaid, was conveyed, committed and delivered to his majesty's said gaol, at the parish aforesaid, in the borough and county aforesaid, for the said cause in the said warrant of commitment mentioned and expressed, to wit, for grand larceny, and was kept and detained therein under the custody of one W. S. then being

shall be so delivered, then was convicted, committed, or detained for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment or detainer, or upon any process whatsoever, for any debt, damages, costs, sum or sums of money amounting in the whole to the sum of £100, every such person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of a misdemeanor, for which he or she shall be in like manner liable to a fine and imprisonment. The *third section* makes it a transportable felony to aid or assist any prisoner to attempt to make his escape from any officer charged to convey him to gaol, by a warrant for treason or felony, except petty larceny, or to aid or assist any felon in escaping from a vessel conveying him to be transported under a lawful order. This statute does not extend to cases where the pri-

soner made an actual escape, but only to an unsuccessful attempt so to do, 2 Leach, 662, 670, 1; but this objection should be taken before verdict, and, if afterwards advanced, the court can only assist the prisoner by recommending him to his majesty's mercy for a pardon, 2 Leach, 662. 670, 1. No indictment can be supported on this act, where the original commitment was *for suspicion* only, 1 Leach, 97; and the words *strong suspicion*, will not make any difference, 1 Leach, 363. *Limitation of proceedings.* The prosecution must be commenced within a year after the offence is committed, 16 Geo. 2. c. 31. s. 4. *Indictment.* It is not necessary to state in the indictment, that the party aided did make any actual attempt to escape, for that will be sufficiently implied, 2 Leach, 662. The indictment must state, that the instruments were conveyed with a design to effectuate the escape, Hawk. b. 2. c. 21. s. 11. in notis.

keeper of the said gaol, for the cause aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that J. B. late of, &c. aforesaid, labourer, well knowing the premises, and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, afterwards, on, &c. with force and arms, at, &c. aforesaid, feloniously did convey, and cause to be conveyed, into the said gaol, two steel files, being instruments proper to facilitate the escape of prisoners, and the said files being such instruments as aforesaid, then and there feloniously did deliver, and cause to be delivered, to the said J. L. (he the said J. L. then and there being a prisoner in the said gaol, and there lawfully detained for the felony and larceny aforesaid, in the said warrant of commitment above-mentioned and expressed) without the consent or privity of the said W. S. then being keeper of the said gaol (under W. A. M. Esq. then sheriff of the said county of Stafford) or any under-keeper of the same gaol, which said files being such instruments as aforesaid, were then and there so conveyed into the said gaol, and delivered to the said J. L. as aforesaid, with felonious intent to aid and assist the said J. L. so being such prisoner, and in custody as aforesaid to escape, and attempt to escape, from out of the same gaol, against the form, &c. and against the peace, &c.

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For conveying an instrument into a common gaol to a prisoner who had been capitally convicted, but judgment respited for the opinion of the judges, with intent to aid, &c. to escape, on 16 Geo. 2. c. 31. s. 2. (a).

That at the delivery of the gaol of our lord the king, of the county of Surrey, holden at Kingston upon Thames, in and for the county aforesaid, on Monday, the 28th day of March, in the 25th year of the reign of our sovereign lord George the Third, king of Great Britain, &c. before the Honorable Sir Henry Gould, knt. one of the justices of our said lord the king, of his court of Common Pleas, the Honorable Sir Richard Perryn, knt. one of the barons of our said lord the king, of his Court of Exchequer, and others their fellows, justices of our said lord the king, appointed to deliver the said gaol of the prisoners therein being; J. M. late of, &c. was in due form of law tried and convicted, for that he, &c. [*here set out the indictment for burglary*]. And an objection in point of law then arising, what judgment the before named justices of our said lord the king, and others

(a) This was the indictment against Owles, Surrey Summer Assizes, A. D. 1785, from

Mr. Knapp's book, fol. 6. see notes to last precedent.

their fellows, justices aforesaid, should give on the said J. M. of and concerning the premises aforesaid, and because the said justices of our said lord the king and others their fellows, justices aforesaid, were not then advised what judgment to give of and concerning the said premises, the said J. M. was by the said justices, and others their fellows aforesaid, forthwith committed to the custody of J. P. Esq. sheriff of the said county of Surrey, to be kept and detained in the aforesaid gaol of our said lord the king, until the next general sessions of the delivery of the said gaol, to be holden for the said county of Surrey, then to hear judgment of and concerning the premises aforesaid, and the said J. M. was then and there by the said sheriff forthwith conveyed unto and kept and detained in the said gaol for the cause aforesaid, to wit, at, &c. in, &c. aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that J. O. late of, &c. aforesaid, labourer, afterwards, and before the next general session of the delivery of the said gaol for the said county of Surrey, to wit, on, &c. with force and arms, at the parish last aforesaid, within the borough and county aforesaid, feloniously did cause to be conveyed into the said gaol of the said county of Surrey, four spring saws, made of iron and steel, and one cast steel file; and the same four spring saws and one cast steel file feloniously did cause to be delivered to the said J. M. in the same gaol, the said four spring saws and one cast steel file being instruments proper to facilitate the escape of prisoners, without the consent or privity of B. H. then being the keeper of the said gaol, or of any under-keeper of the said gaol; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. O. did then and there feloniously cause to be conveyed and delivered the aforesaid instruments unto the said J. M. in the said gaol, with an intent to aid and assist the said J. M. to attempt to escape from and out of the said gaol, and from and out of the custody of the sheriff of the said county, in contempt of, &c. to the evil example, &c. against the form of the statute, &c. and against the peace, &c.

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That on, &c. at, &c. in the, &c. T. F. Esq. then and there being one of the justices assigned, &c. [*as ante*, 160, and state the commitment for forgery, as *ante*, 165, 6,] by virtue of which said warrant of commitment, the said S. S. afterwards, to wit, on, &c. aforesaid, was duly conveyed and committed to a certain gaol of our said lord the king, called the New Prison, at Clerkenwell, situate, &c. in the county, &c. for the cause

For feloniously aiding and assisting a prisoner to attempt to make his escape from New Prison, Clerkenwell, he having been committed there by a justice's mittimus upon a charge

of forgery, on
16 Geo. 2. c. 31.
s. 1. (a).

in the said warrant of commitment above specified and contained, and then and there, to wit, on, &c. aforesaid, at the said, &c. in the said county, &c. was kept and detained in the said gaol in the custody of S. N. then and yet keeper of the said gaol, for the felony aforesaid, in the said warrant of commitment expressed, and then and there, until the 3d day of April, in the 35th year aforesaid, there was kept and detained in the said gaol, for the felony aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that S. I. late of, &c. [*and other defendants*] afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and feloniously were aiding and assisting to the said S. S. then being a prisoner lawfully detained in the said gaol, by virtue of the said warrant of commitment for the felony aforesaid, to attempt to make his escape from and out of the said gaol, against the form of the statute, &c. and against the peace, &c.

Indictment for
breaking prison,
and aiding one
committed on sus-
picion of felony
to escape.

That on, &c. at, &c. one C. D. was taken and apprehended on suspicion of having then lately before feloniously stolen, taken, and carried away, one, &c. of the goods and chattels of A. B. and the said C. D. having been so taken and apprehended as aforesaid, was then and there committed to, and confined and imprisoned in a certain place of confinement there situate, called the cage; until the said C. D. could be taken and conveyed before some or one of the justices of our said lord the king, assigned, &c. to be further dealt with according to law, touching and concerning the premises aforesaid. And the jurors, &c. further present, that A. B. late of, &c. [*and other defendants*] well knowing the premises, and contriving and intending to prevent the due course of law and justice, and to procure the escape of the said C. D. from the said place of confinement, afterwards, and whilst the said C. D. was so confined in the said place of confinement as aforesaid, to wit, on, &c. with force and arms, at, &c. unlawfully did force and break open, and cause and procure to be forced and broken open, the door of the said place of confinement, so that the said C. D. might thereby make her escape from and out of the said place of confinement, by means whereof the said C. D.

(a) From Mr. Knapp's precedents, fol. 7, see also the same form, 2 Leach, 662, and the notes to the precedent, ante, 165, n. (a).

did then and there, with force and arms, unlawfully and voluntarily escape and go at large from and out of the said place of confinement, where she was as aforesaid, before she had been taken and conveyed before any one of the justices of our said lord the king, assigned in form aforesaid, to be dealt with according to law, touching and concerning the premises aforesaid, and that the said [*defendants*] on the said, &c. with force and arms, at the said, &c. wilfully, advisedly, and unlawfully, did aid, abet, comfort, and assist the said C. D. so being in the place of confinement aforesaid, for the cause aforesaid, in making her escape from and out of the said place of confinement (a), in contempt, &c. to the evil, &c. and against the peace, &c.

That at the general quarter session of the peace, holden at —, in and for the county of —, on, &c. before E. F., G. H. &c. [*the names of the justices as in the caption.*] and others their fellows, justices assigned to keep the peace of our said lord the king, in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, by the oath of, &c. [*the grand jurors*] gentlemen, good and lawful men of the county aforesaid, impannelled, sworn, and charged to inquire for our said lord the king, for the body of the county aforesaid, it was presented that C. D. late of, &c. [*setting forth the indictment for the former offence, being a felony.*] And the jurors aforesaid, now sworn here, upon their oath aforesaid do further present, that at the same general quarter session of the peace of our said lord the king, held at, &c. in and for the said county of, &c. upon, &c. the aforesaid C. D. was duly tried and convicted of the felony above mentioned, charged upon him as aforesaid, and that it was then and there adjudged by the same court, that the said C. D. should be transported for the space of seven years, according to the form of the statutes, as by the record thereof, and proceedings, remaining amongst the records of the general quarter sessions of the peace of the said county of, &c. at, &c. in the county aforesaid more fully appears. And the jurors aforesaid, now sworn here, upon their said oath further say, that the aforesaid C. D. being so as aforesaid tried and convicted of the said felony,

Indictment at common law against a private person for breaking gaol, and assisting a felon to escape, under sentence of transportation (b).

(a) The latter averment may be omitted, as, in misdemeanours, all are principals.

(b) See form against Lord Cochrane, post, 190.

was then and there, to wit, at the same general quarter session of the peace of our said lord the king, held at, &c. in and for the county aforesaid, on, &c. committed by the same court to his majesty's gaol, at, &c. in the county aforesaid, upon, and in execution of the said judgment for the felony aforesaid. * And the jurors aforesaid, now sworn here, upon their said oath further present, that A. B. late of, &c. yeoman, being a prisoner in his majesty's gaol, at, &c. aforesaid, in the county aforesaid, on, &c. and well knowing that the aforesaid C. D. then also a prisoner in the said gaol, had been convicted of, and committed to the said gaol, in execution of and for the felony aforesaid, and did then and there remain convicted and committed upon and in execution of the said judgment, for the said felony as aforesaid, afterwards, that is to say, on, &c. with force and arms, at, &c. aforesaid, did wilfully and feloniously rescue the said C. D. then and there being in the said gaol so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, from and out of the said gaol, so that he the said C. D. did make his escape out of the said gaol, and then and there did wilfully and feloniously aid and assist the said C. D. then and there being in the said gaol so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, in making his escape out of the said gaol, and that the said C. D. by the aid and assistance of him the said A. B. did then and there make his escape from and out of the said gaol, and go at large, to wit, at, &c. aforesaid. And the jurors aforesaid, now sworn here, upon their said oath further say, that the said A. B. being a prisoner in his majesty's said gaol, at, &c. aforesaid, in the county aforesaid, on, &c. afterwards, that is to say, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did wilfully and feloniously break the said gaol, and rescue the said C. D. then and there being in the said gaol, so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, from and out of the said gaol, so that he the said C. D. did make his escape out of the said gaol, and then and there did wilfully and feloniously aid and assist the said C. D. then and there being in the said gaol, so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, in making his escape out of the said gaol, and that the said C. D. by the aid and assistance of him the said A. B. did then and there make his escape from and out of the said gaol, and go at large, to wit, at, &c. aforesaid, against the peace, &c.

That heretofore, to wit, on, &c. there issued out of the Court of Exchequer of our lord the king (the said court then and still being at Westminster, in the county of Middlesex) a certain writ of our said lord the king, directed to his then sheriff of the county of S. by which said writ our said lord the king commanded the said sheriff that he should not omit by reason of any liberty, but enter the same, and take J.R. by his body wheresoever he the said sheriff should find him within his bailiwick, and him safely and securely keep, so that he the said sheriff might have his body before the barons of the Exchequer of our said lord the king at Westminster, on the 29th day of November then following, to answer to our said lord the king, concerning certain articles whereof he was impeached, on a certain information exhibited before the said barons of our said lord the king, by his attorney-general, for a forfeiture of two thousand three hundred and thirty-two pounds, for an offence in the information aforesaid mentioned, and further to do and receive in the premises what the said court then and there should see fit to order, and that the said sheriff should have then and there that writ; and the said writ afterwards and before the return thereof, to wit, on, &c. was delivered to A. B. Esq. then sheriff of the county of Surrey aforesaid, in due form of law to be executed, by virtue of which said writ, he the aforesaid J.R. was then and there taken and imprisoned by him the said sheriff, in the gaol of our said lord the king, commonly called the New Gaol, in Southwark, situate in the parish of St. George, Southwark, aforesaid, in the said county of Surrey, to answer to our said lord the king of and concerning the premises in the said writ above specified. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. R. being so in the said gaol in custody as aforesaid, for the cause aforesaid, one R.W. late of, &c. well knowing the premises, but being a person of an evil mind and wicked disposition, and contriving and intending to procure the escape of him the said J.R. out of the said gaol, afterwards, to wit, on, &c. at, &c. aforesaid, with force and arms, unlawfully, knowingly, and advisedly did bring, and cause to be brought and delivered to the said J. R. (then and there being in the gaol aforesaid, in the custody of the said A. B. Esq. then sheriff of the said county of Surrey, for the cause in the writ above specified)

Indictment at common law, for assisting a prisoner to escape out of prison, charged with a forfeiture to the king, upon a writ issued out of the Exchequer (a).

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(a) See forms, Cro. C. C. 8th edit. 396. Stark. 637, 2d edit.

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one rope and two iron hooks, to the intent and purpose that the said J. R. might and should thereby be enabled to make his escape out of the said gaol. And the jurors, &c. do further present, that pursuant to the contrivance and intention of the said R.W. and by means of the said rope and hooks, and by procurement of the said R.W. he the said J. R. afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the said county of S. then and there being in the custody of the said sheriff, in the said gaol, for the cause in the writ above specified, with force and arms, against the will, and without the licence or consent of the said sheriff, and of the then gaoler of the said gaol, unlawfully and voluntarily did escape and go at large out of the said gaol from the custody of the said A. B. then sheriff of the said county of S. And the jurors, &c. do further present, that the said R.W. on the said, &c. aforesaid, with force and arms, at, &c. aforesaid, wilfully, advisedly, and unlawfully, and against the will, and without the licence or consent of the said then sheriff of the said county of S. and also against the will and without the licence or consent of the then gaoler of the said gaol of our said lord the king of his said county of S. did aid, abet, comfort, and assist the said J. R. so being in the said gaol as aforesaid, for the cause aforesaid, in making his escape from the said gaol and custody of the said sheriff, in contempt, &c. to the evil example, &c. and against the peace, &c.

III. ESCAPES—AGAINST OFFICERS.

Indictment at common law against gaoler, for wilfully and feloniously permitting one under sentence of transportation to escape (a).

[*Same as precedent ante, 163, to the asterisk.*] And the jurors aforesaid now sworn here upon their oath aforesaid, do further present, that A. B. late of C. in the county aforesaid, yeoman, then being keeper of his majesty's gaol of — aforesaid, in the county aforesaid, and having the custody of the

(a) See other precedents, Trem. P. C. 244, 5, 6. 2 Burr. 865. Cro. C. A. 331, 3, 8, 341. Cro. C. C. 8th ed. 184, 5, 6, 3. 190. Cro. C. C. 7th ed. 349. 3 P. Wms. 479. Burn, J. Escape. Williams, J. Escape. Stark. 2d edit, 627 to 632. 636. *As to the offence.* See, in ge-

neral, 1 Hale, 590 to 604. Hawk. b. 2. c. 19. per tot. Com. Dig. Escape. A. 1, 2. Burn, J. Escape. Com. Dig. Escape. 4 Bla. Com. 130. The offence of assisting a felon in making an actual escape was felony at common law, even in the case of a private individual,

said W. P. for the cause aforesaid, before then lately committed to the said gaol for the cause aforesaid, on, &c. well knowing that the said W. P. then a prisoner in the said gaol, and in the

and *a fortiori* in case of a gaoler, 2 Leach, 671. There must be an actual as well as lawful arrest, to make an escape criminal in an officer, Hawk. b. 2. c. 19. s. 1, 2. It must also be for a criminal matter, id. s. 3; its continuance at the time must also be lawful, or though legal in its inception, an escape will not be criminal, as if a prisoner be acquitted and have judgment to depart, "paying his fees," it will be no crime to allow him to go at large before they are satisfied, 1 Hale, 594. In some cases, it is an escape to suffer a prisoner to have greater liberty than can be by law allowed him; as to admit him to bail against law, or suffer him to go beyond the limits of the prison though he return, Hawk. b. 2. c. 19. s. 5. Prisoner may be retaken on fresh pursuit after a negligent escape on any pursuit; but after a voluntary escape by none, id. s. 12; but see ante, vol. i. 61. The officer is not excused though he retake his prisoner, nor if he kill him in the pursuit, id. s. 13. Escapes may be either voluntary or negligent. Where a gaoler or other officer wilfully permits an individual charged or convicted of a capital offence to escape, it is certainly voluntary; but where a magistrate bails one who is not bailable, merely negligent. When the gaoler improperly permits the prisoner to go beyond the limits of the prison, it seems to depend on circumstances to which class of offence the act will be regarded as belonging, id. s. 10. Not only officers,

but private individuals who have persons lawfully in their custody, are guilty of an escape if they suffer them illegally to depart, 1 Hale, 595. But they may protect themselves from liability, by delivering over their prisoners to some legal and proper officer, 1 Hale, 594, 595; though, to excuse themselves, they must not merely allege that they transferred them to the constable, &c. but must set forth particularly and by name, the party to whom they delivered them, Hawk. b. 2. c. 20. s. 5; and where a private person is guilty of a negligent escape, the punishment is fine or imprisonment, or both, Hawk. b. 2. c. 20. s. 6. *As to the indictment.* See Hawk. b. 2. c. 19. s. 14. it must state the crime for which the party was in custody, and not merely in general that it was felony, and this must be proved, Hawk. b. 2. c. 19. s. 14, 22. Dyer, 99. 3 P. Wms. 497. Cro. Eliz. 52. It must also be shewn, that the prisoner was actually in the defendant's custody upon the specific charge; for to say that he was charged and in custody will not suffice, unless the accusations are connected, 1 Salk. 272. 1 Ld. Raym. 424. Hawk. b. 2. c. 19. s. 14. The time also when the offence was committed for which the party was in custody must be specified, to shew that it was prior to the escape and subsequent to the last general pardon, Hawk. b. 2. c. 91. s. 14. It should also be shewn that the party went at large, which is best expressed by the words *exivit ad largum*, id. *ibid.* An.

custody of the said A. B. as aforesaid, had been convicted and committed to the said gaol, in execution of and for the felony aforesaid, and did then and there remain so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. did voluntarily and feloniously permit and suffer the said W. P. then and there being in the said gaol in the custody of him the said A. B. and so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, to escape and go at large whithersoever he would, out of the said gaol and custody, whereby he the said W. P. did then and there escape from and out of the said gaol, and go at large, to wit, at, &c. against the peace, &c.

every indictment for a voluntary escape must allege that the defendant "*feloniously and voluntarily permitted the said A. B. to go at large,*" id. ibid. In Cro. C. A. 338, the indictment is for a misdemeanor, but it should seem it should be for a felony, 3 P. Wms. 497. But in an indictment against a constable for the escape of a street-walker, delivered by a watchman into his custody, it is not necessary to aver that she was delivered to him *as such*, or that he *knew* her so to be, but the words "*she being, &c.*" will suffice, 2 Burr. 864.—*Mode of trial, &c.* Escapes amounting to felony in officers or others, and which make the offenders accessory to the original offence, cannot be tried or determined before the conviction or attainder by other means of the original offender, for a felony; though they may be fined and imprisoned as for a high misprision, 2 Inst. 592. 1 Hale, 598, 9. The officer cannot be brought to judgment by calling over the record of prisoners, though on that he may be fined for a negligent escape, but must be proceeded against by indictment, 1 Hale, 599, 560.

Though by stat. West. 1. c. 3. proceedings could only be before justices in eyre, oyer and terminer, or by the king's bench, by 31 Ed. 3. c. 14. and 1 R. 3. c. 3. escapes are brought within the jurisdiction of the county magistrates, 1 Hale, 560. The proper mode of proceeding for a negligent escape is also by indictment or presentment, 1 Hale, 563.—*Judgment.* A voluntary escape amounts to the same kind of crime, and is punishable in the same way as the original offender, whether he be attainted, indicted, or only in custody on suspicion, 1 Hale, 234. Hawk. b. 2. c. 19. s. 22. A person who wrongfully takes on himself the office of gaoler is as much liable as if he were duly appointed, 1 Hale, 594. A mere informality in the mittimus will be no excuse, 1 Salk. 273. Hawk. b. 2. c. 19. s. 24. But no one can be punishable in this degree for the default of a deputy, 1 Salk. 272, in notis. Nor can any gaoler be a felon in respect of a voluntary escape, unless, at the time, the offence of his prisoner was felony, and cannot be made so by its becoming so

That at the assizes and general delivery of the gaol of our lord the king, holden at Hereford, in and for the county of Hereford, on, &c. before Sir R. P. knight, one of the barons of our said lord the king of his court of Exchequer, at Westminster, F. B. esq. one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and others their fellows, justices of our said lord the king, assigned by letters patent of our said lord the king, to deliver his gaol of the said county of H. of the prisoners therein, being upon the oath of F. G. esq. U. P. esq. &c. [*here set out the names of the grand jury,*] good and lawful men of the said county of H. then and there sworn and charged to inquire for our said lord the king, and the body of the said county of H. It was presented that W. D. &c. [*here set forth the indictment.*] Wherefore the sheriff of the county of H. aforesaid, was commanded that he should not omit by reason of any liberty in his bailiwick, but that he should take the said W. D. to answer the premises. And thereupon at the same assizes and general delivery of the gaol of our said lord the king, holden at H. in and for the county of H. aforesaid, on, &c. aforesaid, before the said justices of our said lord the

Indictment at common law against a gaoler, for voluntarily permitting to escape a prisoner convicted of a clergyable felony at the assizes (*a*).

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afterwards, 1 Hale, 591. Neither can he be thus indicted till after the attainder of the principal, Hawk. b. 2. c. 19. s. 26. though he may be fined for the misprision, *id. ibid.* A negligent escape may be punished by fine at common law, Hawk. b. 2. c. 19. s. 31. A sheriff is thus liable for the fault of his deputy, 1 Salk. 272. One instance of such negligence does not amount to a forfeiture of the gaoler's office, though a repetition of such misfeasance will enable the court to oust him in their discretion, Hawk. b. 2. c. 19. s. 30. Anciently the penalty for the negligent escape of the party attainted, was of course £100; of one indicted but not attainted £5; and of a prisoner before indictment some discretionary sum; on the second escape the penalties were doubled, but no

additional fine was levied for the escape of a man charged with two offences, Hawk. b. 2. c. 19. s. 33. By 5 Edw. 3. c. 8. the marshals of K. B. are liable to six months imprisonment, and ransom, at the king's pleasure, for the negligent escape of any prisoner in their custody. At the present day, when the defendant is brought up for judgment, the prosecutor may produce affidavits made even by a witness on the trial in aggravation of the fine which the defendant, in mitigation, may answer and contradict, Hawk. b. 2. c. 19. s. 34, in *notis.* The king may pardon a voluntary escape before it is committed, Hawk. b. 2. c. 19. s. 32.

(*a*) See forms, Cro. C. C. 8th edit. 188. Cro. C. A. 336. See note to precedent, ante, 171, n. (*a*).

king above named, and others their fellows, aforesaid, came into court, there the said W. D. under the custody of the said Sir E. B. baronet, sheriff of the county of H. aforesaid, (into whose custody in the gaol aforesaid, for the cause aforesaid he was before committed) and being brought to the bar, there in his own proper person was committed to the said sheriff, and forthwith concerning the premises, in the indictment above specified and charged on him, being asked in what manner he would be acquitted thereof, the said W. D. said that he was not guilty thereof, and concerning that for good and ill he put himself upon his country, therefore a jury was thereupon immediately commanded to come before the said justices of our said lord the king above named, and others their fellows, aforesaid, there by whom and so forth, and who were of no affinity to the said W. D. to recognize upon their oath whether the said W. D. was guilty of the felony aforesaid or not, and the jurors of the said jury, by the said sheriff to that matter impaunelled and returned, to wit, J. B. T. H. &c. [*here set out the names of the petit jury,*] being called, came, who being chosen, tried, and sworn to speak the truth of and concerning the premises aforesaid, said upon their oath, that the said W. D. was guilty of the felony aforesaid, in the indictment above specified, in manner and form as in and by the said indictment was above against him set forth, and that the said W. D. at the time of the committing of the said felony, or at any time since, had no goods or chattels, lands or tenements, to the knowledge of the said jurors, and upon this it was required by the court there of the said W. D. if he had or knew any thing to say for himself, why the court there ought not to proceed to judgment and execution concerning him, upon the said verdict; and the said W. D. prayed the court there, that the benefit of the statute in that case made and provided, might be granted unto him, and it was granted unto him accordingly. Whereupon all and singular the premises being seen and understood by the court there, it was considered and adjudged by the court there, that the said W. D. should be imprisoned six calendar months, and within that time, that is to say, on Saturday, the twenty-second day of April then next, between the hours of eleven and one, should be publicly whipped for two hundred yards, at the market-place in Hereford, and then discharged. And the jurors now

[175] here sworn and charged to inquire for our said lord the king, and the body of the said county of H. do further present, that afterwards, to wit, at the said assizes, and general deli-

very of the gaol of our said lord the king, above-mentioned, he the said W. D. was committed to the care and custody of R. D. then and still being keeper of the gaol of our said lord the king, of the county of H. aforesaid, at H. aforesaid, there to be kept and imprisoned in the gaol aforesaid, according to, and in pursuance of the judgment and sentence aforesaid, and the said R. D. him the said W. D. in the custody of him the said R. D. had, for the cause aforesaid, in the gaol aforesaid. And the jurors last aforesaid, upon their oath aforesaid, do further present, that the said R. D. late of the parish of Saint Peter, in the city of H. in the said county of H. yeoman, afterwards, and before the expiration of the said six calendar months, for which he the said W. D. was so ordered to be imprisoned as aforesaid, to wit, on, &c. at, &c. unlawfully, voluntarily, and contemptuously did permit and suffer the said W. D. to escape and go at large wheresoever he would, whereby the said W. D. did then and there escape out of the said prison, and go at large whithersoever he would, in contempt of our said lord the king and his laws, contrary to the duty of him the said R. D. so being keeper of the gaol aforesaid, in manifest hindrance of justice, and against the peace, &c.

That on, &c. J. D. esq. then being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of Berks, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, in due form of law, did make his warrant of commitment, under his hand and seal, to wit, at, &c. bearing date the same day and year aforesaid, directed to the keeper of the common gaol, in and for the said county of Berks, by which said warrant, &c. [*here recite the warrant*], as by the same warrant more fully appears, by virtue of which said warrant of commitment, afterwards, to wit, on the said, &c. at, &c. A. B. then being the keeper of the said common gaol of the said county of B. did receive the said W. M. into his custody, in the said common gaol there situate. And the jurors, &c. that the said A. B. late of, &c. yeoman, so being keeper of the said common gaol, and having the said W. M. in his custody in the said gaol, on that occasion, afterwards, to wit, on, &c. at, &c. unlawfully and negligently did

Indictment at common law against a gaoler for negligently permitting to escape a prisoner committed to his custody, by virtue of a justice's warrant for robbery (a).

(a) See forms, Cro. C. C. 8th note to precedent, ante, 171, ed. 185. Cro. C. A. 331; and n. (a).

permit and suffer the said W. M. (so being a prisoner, committed to the said gaol as aforesaid) to escape and go at large, from and out of the custody of him the said A. B. out of the said prison, wheresoever he would, whereby the said W. M. did then and there escape out of the said prison, and go at large, whithersoever he would, to the great hindrance and obstruction of justice, in contempt, &c. to the evil example, &c. and against the peace, &c.

Indictment at common law against the turnkey of a common gaol for a misdemeanor, in aiding a prisoner, committed by virtue of a justice's warrant for petit larceny, to make his escape (a).

Cheshire. The jurors, &c. That one A. B. esq. then being one of the justices, &c. [*same as ante*, 175], in due form of law, did make his warrant of commitment, under his hand and seal, to wit, at, &c. bearing date the same day and year aforesaid, directed to the keeper of the common gaol, in and for the said county of C. by which said warrant of commitment, the said keeper was required to receive, &c. [*here set forth the mittimus*] as by the same warrant more fully appears; by virtue of which said warrant of commitment, afterwards, to wit, on the said, &c. at, &c. G. H. then being keeper of the common gaol of the said county of C. did receive the said C. D. into his custody in the said common gaol, there situate. And the jurors, &c. that D. M. late of, &c. labourer, well knowing the premises, afterwards, and whilst the said C. D. was a prisoner as aforesaid, for the cause aforesaid, to wit, on, &c. with force and arms, at, &c. unlawfully, voluntarily, and unjustly did take, and cause to be taken, certain irons, chains, and fetters, then affixed and fastened upon the legs of the said C. D. from and off the same, he the said C. D. then being such prisoner as aforesaid, and also did permit him the said C. D. to go out at a certain back door of and belonging to the said gaol, and over a certain wall surrounding and inclosing the same, and to go at large out of the said prison, wheresoever he would, he the said D. M. then and there having the custody and keeping of the keys of and belonging to the said prison, whereby the said C. D. did then and there escape out of the said prison, and go at large whithersoever he would. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said D. M. then and there, in manner and form aforesaid, was aiding and assisting the said C. D. to make his escape from and out of the said prison, to the great hindrance and obstruction of justice,

(a) See forms, Cro. C. C. 8th ed. 186. Stark. 2d edit. 632.

in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. That the said C. D. on the said, &c. was lawfully committed to the custody of the said G. H. then being keeper of his said majesty's gaol, of and for the said county of C. to wit, at, &c. aforesaid, by virtue of a certain warrant of commitment duly made, under the hand and seal of the said A. B. then being such justice as aforesaid, bearing date the same day and year last aforesaid, upon and in pursuance of a certain charge upon oath made by the said E. F. against the said C. D. to and before him the said A. B. being such justice as aforesaid, alleging, that the said C. D. had feloniously stolen and carried away one hempen sack of him the said E. F. of the value of ten pence, from and out of a certain barn of him the said E. F. situate at, &c. and by which said last-mentioned warrant, the said G. H. was required safely to keep the said C. D. until the then next general quarter session of the peace, to be holden in and for the said county of C. or until he should be thence delivered by due course of law, as by the said last-mentioned warrant more fully appears. And the jurors aforesaid, on their oath aforesaid, do further present, that the said D. M. so having the custody and keeping of the said keys as aforesaid, and well knowing the said last-mentioned premises, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. unlawfully, voluntarily, and contemptuously did permit and suffer the said C. D. then being a prisoner in the said gaol, under the custody of the said G. H. by virtue of the said last-mentioned warrant, for the cause last aforesaid, to escape and go at large out of the said gaol, wheresoever he would, without the knowledge, privity, or consent of the said G. H. being such keeper as aforesaid,* and without any lawful authority whatsoever; whereby the said C. D. did then and there escape out of the said prison, and go at large, whithersoever he would, to the great hindrance and obstruction of justice, in contempt of our said lord the king, and his laws, to the evil example of all others, and against the peace, &c.

Second count.

[177]

That heretofore, to wit, on, &c. our said lord the king commanded the sheriff of his county of L. by his writ issued out of the court of our said lord the king, before the king himself at Westminster, in the county of Middlesex, that, &c. [*here recite the writ of habeas corpus,*] which said writ, afterwards, to wit, on, &c. at, &c. was delivered to A. B. then being sheriff of the said county of L. by V. K. esquire, then sheriff of B. afore-

Indictment at common law against a gaoler for negligently permitting a prisoner to escape out of his custody, brought by habeas corpus from another

gaol, and charged
with horse steal-
ing (a).

[178]

said, together with the body of the said A. Q. and the cause of the taking and detaining of the said A. Q. according to the direction and command of a writ of our said lord the king of habeas corpus, then lately before issued out of the court aforesaid, to the same sheriff of Bucks: and the said sheriff of Bucks did then and there certify to the said sheriff of Lincoln, that then lately before, to wit, on, &c. T. B. esquire, then being one of the justices of our said lord the king, assigned, &c. [*as post*, 182,] did make a certain warrant under his hand and seal, bearing date the same day and year, directed to the constable of N. and also to the gaoler of our said lord the king at A., in the said county of B. or his deputy, and thereby recited, that when the said A. Q. was brought before the said justice, for suspicion of feloniously stealing a black mare from Mr. W. of, &c. which he offered to sell at N. aforesaid, and when the said Mr. W. had described and owned the said mare, the said justice by his warrant aforesaid, did require the said constable to convey the said A. Q. to the gaol of our said lord the king at A. and there to deliver him to the keeper of the gaol aforesaid, or his deputy, who was thereby required to keep him in safe custody until he should from thence be delivered by due course of law; which said A. Q. so being delivered to the said sheriff of L. in form aforesaid, afterwards, to wit, on, &c. aforesaid, by the said last-mentioned sheriff, by virtue of the writ of our said lord the king first above recited, was carried to the gaol of our said lord the king at L. aforesaid, there to be kept until he should be delivered from thence by due course of law; and that one J. S. late of L. aforesaid, in the said county of L. yeoman, afterwards, to wit, on, &c. then being keeper of the said last-mentioned gaol, and having the said A. Q. in the gaol last aforesaid, under his custody for the cause aforesaid, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, the said A. Q. unlawfully and negligently did permit to go out of the said last-mentioned gaol, and at large to escape, and who, by means of such negligence and permission, did then and there escape out of the same gaol and go at large whithersoever he would, in great obstruction of justice, to the evil example, &c. and against the peace, &c.

(a) See form, Cro. C. C. 7th edit. 349.

That on, &c. at, &c. one J. S. was brought by one J. B. then being one of the constables of the same parish, before A. C. esquire, then and yet being one of the justices, &c. [as *post*, 182,] and the said J. S. then and there was charged by one D. T. spinster, upon the oath of the said D. T., with having feloniously ravished the said D. T. and had carnal knowledge of her body against her will, and that the said J. S. then and there was examined before the said A. C. the justice aforesaid, touching the aforesaid offence to him as above charged, upon which the said A. C. so being such justice of the peace as aforesaid, did then and there make a certain warrant under his hand and seal in due form of law, bearing date, &c. directed to the keeper of Newgate or his deputy, commanding him the said keeper or his deputy, that he should receive into his custody the said J. S. brought before him and charged upon the oath of the said D. T. with the premises above specified, and the said justice by the aforesaid warrant, did command the keeper of Newgate or his deputy to safely keep him there, until he by due course of law should be discharged; which said warrant afterwards, to wit, on the said, &c. aforesaid, was delivered to the said J. B. then and there being one of the constables of the same parish as aforesaid, and then and there having the said J. S. in the custody for the cause aforesaid, and the said J. B. was then and there required and commanded by the said A. C. the aforesaid justice, immediately to convey the said J. S. to the said gaol of Newgate, and to deliver him the said J. S. to the keeper of the said gaol or his deputy, together with the warrant aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. B. late of, &c. aforesaid, baker, afterwards, to wit, on the said, &c. aforesaid, then as aforesaid being one of the constables of the said parish, and then having the said J. S. in his custody for the cause aforesaid, at, &c. aforesaid, the said J. S. out of the custody of him the said J. B. unlawfully and negligently did permit to escape and go at large whithersoever he would, whereby the said J. S. did then and there escape and go at large whithersoever he would, to wit, at, &c. to the great hindrance of justice, to the evil example, &c. and against the peace, &c.

Indictment at common law against a constable for negligently permitting a man to escape that was committed for a rape (a).

[179]

(a) See Cro. C. C. 7th edit. 346. Stark. 2d edit. 630.

Indictment at common law against a constable as head of the nightly watch for wilfully permitting a prostitute, committed to his care by a watchman, to escape before she was taken to a justice (a).

[180]

That one R. M. late of, &c. being lawfully appointed one of the nightly watchmen of and for the said parish, and being in his said office and place, and duly performing his duty of such watchman there, he the said R. M. at an unseasonable time, to wit, between the hours of one and two of the clock in the morning of the sixteenth day of December, in the thirty-first year of the reign, &c. at, &c. did apprehend and take into his custody, one M. P. then and there being a loose, idle, lewd, and disorderly person, and a common street walker, and being then and there found behaving herself riotously, and walking the streets there, to pick up men, in breach of his majesty's peace, and did then and there take and convey the said M. P. in his custody, to a certain prison called the watch-house in the said parish; and did on that occasion there deliver her into the custody of one J. B. who then and there was one of the constables of the said parish, and then and there being in the execution of his said office of such constable as the head of the nightly watch of the said parish, and did on that occasion then and there leave her the said M. P. in charge with the said J. B. so being such constable as aforesaid, and in the execution of his said office as aforesaid, and did then and there charge and request the said J. B. so being such constable, and in the execution of his said office as aforesaid, to keep and detain the said M. P. so being such loose, idle, lewd, and disorderly person, and a common street walker, who had been found walking in the streets there to pick up men as aforesaid, in his custody, until the said M. P. should be safely and conveniently carried and conveyed before some one of his majesty's justices assigned to keep the peace of our said lord the king, in and for the said liberty, in the county aforesaid, there to be dealt with by such justice, according to due form of law, for her said offence and breach of the king's peace. Yet the said J. B. late of, &c. so being such constable as aforesaid, and well knowing the premises, but not regarding the duty of his office as such constable as aforesaid, then and there unlawfully and wilfully discharged her the said M. P. from and out of his custody, before she had been carried before any justice of the peace of our said lord the king, to be dealt with according to due form of law, and would not keep or detain her in his custody for the

(a) See Cro. C. C. 8th edit. where this indictment was held
190. Cro. C. A. 341. Stark. sufficient.
2d edit. 636. 2 Burr. 865,

purpose aforesaid, but wilfully suffered and permitted her the said M. P. to escape and go at large wheresoever she would, contrary to his duty in that behalf, to the great hindrance and obstruction of justice, to the evil example, &c. and against the peace, &c.

That E. and F. being respectively watchmen, lawfully appointed and employed in and for the united parishes of St. Giles in the Fields, and St. George's Bloomsbury, in the county of Middlesex, and in the execution of their office as such watchmen, on, &c. between the hours of two and three of the clock in the morning of the same day, at, &c. aforesaid, and during the time of their watching there, did arrest and apprehend divers, to wit, four disorderly persons, being then and there respectively found within the said last-mentioned parish, disturbing the public peace, and did then and there take and convey the said four persons so arrested and apprehended to a certain watch-house in the said last-mentioned parish, and did then and there deliver them as soon as conveniently might be, into the custody of C. D. late of, &c. (the said C. D. then and there being one of the headboroughs of and for the said united parishes, and in the execution of his office as headborough of the night at and in the said watch-house), in order that the said four persons might be there, to wit, in the said watch-house, or in some proper place of safety, secured and detained, until they could be conveniently conveyed before some or one of his majesty's justices of the peace, in and for the said county of Middlesex aforesaid, to be dealt with according to law for their said offence; and although the said C. D. then and there took charge of the said four persons so apprehended and delivered to him as aforesaid; yet the said C. D. so being such headborough as aforesaid, not further regarding the duty of his office as such headborough, but neglecting the same, did not, nor would dispose of the said four persons according to law, but on the contrary thereof, he, the said C. D. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully and wilfully discharged the said four persons from and out of his custody, and suffered and permitted them to escape and go at large wheresoever they would, before they had been conveyed before one or more of his said majesty's justices of the peace in and for the said county of Middlesex, to be dealt with according to law for their

Indictment against the headborough of a parish for suffering four persons, whom the watchmen had brought to him in the watchhouse, to go at large, and for compounding with them for money (a).

[181]

(a) See last precedent, and notes.

said offence [and afterwards, and before the said four persons, or any of them, had been conveyed before one or more of his said majesty's justices of the peace, for the purpose aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, he the said C. D. so being such headborough as aforesaid, unlawfully and wilfully compounded the said offence, that is to say, by then and there receiving and taking the sum of 5s. of lawful, &c. as and by way of composition for the same], contrary to his duty in that behalf, to the great damage and hindrance of public justice, to the evil example, &c. and against the peace, &c. [*second count same as first, leaving out what is contained within the brackets.*]

Third count, for extorting money from one of them.

And the jurors, &c. that afterwards, and before the said last-mentioned four persons, or any of them had been conveyed before one or more of his majesty's justices of the peace for the purposes aforesaid, to wit, on the same, &c. aforesaid, at, &c. aforesaid, the said C. D. unlawfully, corruptly, deceitfully, and extortiously, for wicked lucre and gain, and contrary to the duty of his office as such headborough as last aforesaid, did extort, receive, and take, of and from one of the said last-mentioned persons whose name is to the jurors aforesaid unknown, the sum of 5s. of like lawful money, as and by way of gratuity and reward to him the said C. D. for not conveying the said last-mentioned four persons, or any of them, before one or more of his said majesty's justices of the peace, in and for the said county of Middlesex, to be dealt with according to law, for their said last-mentioned offence, in contempt, &c. to the evil example, &c. and against the peace, &c.

Indictment at common law against a constable for negligently permitting a man to escape, who was arrested by him for a misdemeanor (a).

[182]

That on, &c. at, &c. one S. C. came before A. K. esquire, then being one of the justices assigned, &c. [*as post*, 182,] and the said S. C. did then and there, on his oath, before the same justice, charge, accuse, and give information against one W. M. of, &c. aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of the most noble J. duke of C. at E. in the said county of M, (b); whereupon he the said A. K. the justice aforesaid, did then and there, to wit, at, &c. aforesaid, make a certain warrant under his hand and seal, in due form of law, directed to the constable or headborough of, &c. in

(a) See form, Cro. C. C. 7th edit. 348. 2 Stark. 2d ed. 632.

(b) The statement of the

warrant should show an offence; this warrant seems to have been insufficient.

the, &c. aforesaid, thereby requiring him to take the body of the said W. M. and bring him before the said A. K. the justice aforesaid, to answer to such matters and things as should be alleged against him touching the said misdemeanor, which said warrant, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, was delivered to one T. W. then being one of the constables of the said parish of P. in due form of law to be executed; by virtue of which said warrant the said T. W. afterwards, to wit, on, &c. at, &c. aforesaid, did take and arrest the body of the said W. M. and him the said W. M. in his custody for the cause aforesaid; yet, nevertheless, the said T. W. late of the parish of P. in the county aforesaid, yeoman, afterwards, to wit, on, &c. aforesaid, the duty of his office in that respect not regarding, at, &c. aforesaid, unlawfully, and negligently did permit the said W. M. to escape, and go at large whithersoever he would, whereby the said W. M. did then and there escape and go at large whithersoever he would, out of the custody of him the said T. W. to the great hindrance of justice, in contempt, &c. and against the peace of, &c.

FOR RESCUES.

That on, &c. at, &c. J. P. esq. then and there being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of—, (or city of —,) and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county (or

For an assault on a constable having a prisoner in custody under a justice's warrant, and rescuing him (a).

(a) See other precedents, Burn, J. Rescue. Williams, J. Escape, II. Cro. C. C. 403 to 409. Cro. C. A. 293 to 300. 4 Wentw. 303 to 315. As to the offence. See, in general, 1 Hale, 606 to 608. Hawk. b. 2. c. 21. Com. Dig. Rescous, D. 3. Bac. Abr. Rescue, C. Burn, J. Rescue. Williams, J. Escape, II. Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment; and it is generally the same offence in the stran-

ger so rescuing, as it would have been in a gaoler to have voluntarily permitted an escape. A rescue, therefore, of one apprehended for felony, if the party is convicted of felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor, 4 Bla. Com. 131. 1 Hale, 607. But if the party be not so convicted, then the party rescuing shall be subject to fine and imprisonment as for a misdemeanor, 2 Hawk. c. 21. s. 8. To constitute res-

city) committed, did make his certain warrant in writing under his hand and seal, directed to A. C. of, &c. in the said county,

cous, the felon must be in actual custody, though whether in that of an officer or private individual, is not material, though in the latter case the party should know that the prisoner is in lawful custody, while in the former he is bound to take notice at his peril, 1 Hale, 606. This offence agrees with prison breaking by the offender himself in the kind and lawfulness of the custody from which the prisoner must be delivered, in the necessity for an actual escape, and not a mere attempt, the necessity of proceeding by indictment, and the circumstance that where the defendant is saved from punishment of death by the stat. "*de frangentibus prisonam*" he is punishable by fine and imprisonment, as for a high misdemeanor, Hawk. b. 2. c. 21. s. 1 to 6. But it differs in these respects, that though if a traitor break prison he is guilty of felony only, if a stranger rescue others, he is guilty of treason, 1 Hale, 237, and a prisoner who breaks gaol may be arraigned for that crime before he is convicted of the original felony, but the third person who rescues a felon, cannot be found guilty before he is attainted, Hawk. b. 2. c. 21. s. 8. If the principal die, before he is attainted, or be acquitted the rescuer will be fined and imprisoned, 1 Hale, 116. 598, 9. By the 1 & 2 Geo. 4. c. 88. s. 1, any person rescuing, or aiding and assisting in rescuing any person charged with, or suspected of, or convicted for, any felony, or on suspicion thereof, if the rescuer, &c. be convicted of felony, and en-

titled to the benefit of the clergy, and liable to imprisonment not exceeding one year; the court, at its discretion, may adjudge him to be transported for seven years, or to be imprisoned and kept to hard labour for not less than one, and not exceeding three years. By the 25 Geo. 2. c. 37. s. 9, the rescuing, or attempting to rescue a murderer, whilst proceeding to execution, or rescuing out of prison a person committed for, or convicted of murder, is felony, and punishable with death. The rescuing a party in custody for an offence against the Black act, is now only punishable with transportation or imprisonment, and hard labour, 4 Geo. 4. c. 54. s. 1, formerly it was felony and punishable with death, see precedent for such offence, Stark. 578. By the 5 Geo. 4. c. 84. s. 22, a party rescuing, or attempting to rescue, or assisting in rescuing, or attempting to rescue an offender sentenced or ordered to be transported or banished, or who shall have agreed to transport or banish himself, on certain conditions, either for life or any number of years, from the custody of the sheriff, &c. or other person conveying, removing, transporting, or reconveying him, or causing to be conveyed any disguise, &c. to such offender, every such offender shall be punishable in the same manner as if such offender had been confined in a gaol or prison in the custody of the sheriff or gaoler, for the crime of which such offender shall have been convicted. The 23d section of

yeoman, then and there being constable of the parish of, &c. aforesaid, in the county aforesaid, by which said warrant he the said A. C. the constable aforesaid, was commanded to take the body of A. O. late of, &c. yeoman, and bring and have

same act, points out the form of the indictment in such case. As to the assaulting constables, &c. and obstructing process, see ante, 154, 164. *The Indictment.* Must set forth the nature and cause of the imprisonment, and the special circumstances of the fact in question, Hawk. b. 2. c. 21. s. 5. Thus in a rescue from the house of correction, it must show for what the prisoner was committed there, 2 Stra. 1226. If it states that, by virtue of a plaint before the sheriff, the prisoner was lawfully arrested, it will be sufficient without saying by a good warrant, for that will be intended if he was lawfully arrested, Com. Dig. Rescous, D. 3. It will be good, though it does not state *vi et armis*, for the word *recussit* imports it, 2 Bulst. 208, and though it does not show where the rescue was, for it will be intended, where the arrest was made, id. *ibid.* But it must expressly show the year and day, both of the arrest and rescous, and the time of the latter is not sufficiently shown by stating that of the former, Dyer, 164. If an uncertain or impossible day be laid, the proceedings will be invalid, Bac. Abr. Rescue, D. It seems also to be doubtful whether it be not insufficient to allege, that on, &c. E. F. committed a certain felony, "*per quod A. B. prædictum E. F. cepit arrestavit, et in salvâ custodiâ suâ ad tunc et ibidem eundem E. F. habuit et custodivit,*" because no time of

the arrest is named in the same sentence with it, and it is doubtful whether the time of the custody, which is alleged in the next sentence, by force of the copulative be also applied to the caption, Dyer, 164. No defect can be aided by verdict, Bac. Abr. Rescue, D. An indictment stating that the judges of an inferior court of record of the town and county of, &c. issued their writ directed to T. B. one of the serjeants at mace of the said town and county on which prisoner is taken, is bad, because it does not appear that the officer was an officer of the court, 5 East, 304. By the 23d section of 5 Geo. 4. c. 84, in an indictment against a party rescuing, &c. contrary to that act, (*vide supra*) it is sufficient to allege the order made for transportation or banishment of the offender, without alleging any indictment, trial, conviction, judgment, or sentence, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender; and by 24th section of the same act, the certificate of the clerk of the court of the conviction and sentence, will be sufficient evidence. *Judgment.* If a traitor be rescued from custody, the offender will have judgment of treason; if a felon, of felony; if a party accused of a misdemeanor, of a trespass, Hawk. b. 2. c. 21. But the rescue of a felon at common law, is within clergy, 1 Hale, 599, 607.

him the A. O. before the said J. P. to be examined by him the said J. P. concerning an assault, said to have been committed by him the said A. O. upon A. J. of, &c. at, &c. aforesaid, yeoman; and which said warrant was afterwards, to wit, on, &c. aforesaid, delivered to the said A. C. so being such constable as aforesaid, to be executed in due form of law; and which said A. C. so being such constable as aforesaid, afterwards, that is to say, on, &c. (a) at, &c. aforesaid, by virtue of the said warrant did take and arrest the said A. O. for the cause aforesaid, and him the said A. O. in his custody, by virtue of the said warrant then and there had; and that the said A. O. late of, &c. and B. O. late of, &c. well knowing (b) the said A. O. so to be arrested as aforesaid, afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms (c) in and upon the said A. C. the constable aforesaid, then and there being in the peace of God and of our lord the king, and in the execution of his said office then and there being, did make an assault, and him the said A. C. then and there did beat, wound, and ill-treat, and that the said B. O. him the said A. O. out of the custody of the said A. C. and against the will of the said A. C. then and there with force and arms unlawfully did rescue, and put at large to go where he would, and that the said A. O. himself out of the custody of the said A. C. and against the will of the said A. C. then and there with force and arms unlawfully did rescue and escape at large where he would go, in contempt of our said lord the king and his laws, to the great damage of the said A. C., to the evil example, &c. and against the peace, &c. [*Add a common count for an assault on officer in execution of his office of constable, and a count for an assault and battery general.*]

For an assault on officer, and for rescue after the prisoner had been taken under a warrant of a justice of the peace, backed into another county against prisoner and a third person (d).

That on, &c. at, &c. J. H. esquire, then and there being one of the justices of the said lord the king, assigned, &c. [*as ante*, 182,] did make his certain warrant in writing under his hand and seal, directed to all constables and other peace officers of the same county, and especially to C. B. for that purpose, thereby requiring them, upon sight thereof, to take, &c. [*here set forth the warrant*], which said warrant, afterwards, to wit,

(a) See the note to the precedent, ante, 182, note (a).

(b) Id. ibid.

(c) Not necessary, see ante, 182, note (a).

(d) See form, 4 Wentw. 306, and notes to precedent, ante, 182, 3.

on, &c. at, &c. aforesaid, was delivered to the said C. B. to be executed in due form of law. And the jurors, &c. do further present, that before the execution of the said warrant, to wit, on, &c. the said W. S. did go into and reside, and was in a certain place out of the said city of C. and county of the same city, to wit, at the parish of, &c. in the county of M. and thereupon and upon proof upon oath of the hand-writing of the said J. H. to the said warrant, to wit, on, &c. at, &c. J. S. esquire, then and still being one of the justices of the said lord the king, assigned, &c. [*as ante*, 182] did then and there make a certain indorsement on the aforesaid warrant, with his name thereunto subscribed, and did then and there direct the same to all constables and other his majesty's officers of the peace, whom the same might concern; and by such warrant and indorsement, the said J. S. so being such justice in and for the said county of Middlesex, did order and direct the aforesaid warrant should be executed within the said county, due proof on oath of the hand-writing of the within magistrate, (meaning the said J. H.) having that day been made before him the said J. S. and then and there delivered the said warrant so indorsed, to the said C. B. to be executed according to law; by virtue of which said warrant and indorsement, the said C. B. afterwards, to wit, on, &c. at, &c. did take and arrest the said W. S. according to the command of the said warrant, and then and there had the said W. S. in his lawful care and custody, by virtue of the said warrant and indorsement; and the said W. S. being so arrested, and in the care and custody of the said C. B. as aforesaid; the said W. S. late of, &c. and J. K. late of, &c. afterwards, to wit, on, &c. with force and arms, &c. at, &c. did make an assault on the said C. B., then and there being in the peace of God and our said lord the king, and then and there lawfully having the said W. S. in his care and custody as aforesaid, and him the said C. B. did then and there beat, bruise, and ill-treat, so that his life was greatly despaired of, and him the said W. S. out of the custody and against the will of the said C. B. then and there did rescue and set at large whither he would go: and the said W. S. himself out of the custody, and against the will of the said C. B. then and there with force and arms, &c. unlawfully did rescue and escape at large whither he would go, in contempt, &c. to the evil example, &c. and against the peace, &c. [*Add count for a common assault.*]

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For a rescue of one in custody under a justice's warrant, for having game, nets, &c. in his possession.

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That on, &c. at, &c. W.C. clerk, then and there, and from thence hitherto being one of the justices of our said lord the king, assigned, &c. [*as ante*, 182] did make his certain warrant in writing under his hand and seal, directed to W.B., then and there being constable of the said parish of G. in the county of H. aforesaid, and to T.H. and J.H. and thereby after reciting that complaint, &c. [*as in the warrant*] he the said W.C. required them the said W.B. and T.H. and each of them, to enter into and search in the day-time the house, out-houses, and other places of J.C. [*Setting out the warrant.*] Which said warrant, afterwards, to wit, on, &c. aforesaid, at the parish of, &c. aforesaid, in, &c. aforesaid, was delivered to the said W.B. so being such constable as aforesaid, and to the said T.H. to be executed in due form of law, by virtue of which said warrant, he the said W.B. afterwards, to wit, on, &c. aforesaid, in the day-time, entered the house of said J.C. situate and being in the parish aforesaid, and then and there in the day-time searched the house, and did then and there find in the said house, and in possession of said H. divers, to wit, four partridges, a certain wire snare for taking hares, divers, to wit, four coney nets, and a large quantity, to wit, 100 pieces of wire, wherewith to take and destroy game; and the said W.B. did then and there seize and take the said partridges, wire snare, coney nets, and wires, and then and there carried the same to the said W.C. in obedience to said warrant, and thereon the said W.C. so being such justice as aforesaid, afterwards, to wit, on the day and year aforesaid, in the parish aforesaid, made his certain other warrant in writing under his hand and seal, directed to the said W.B. being such constable as aforesaid, and to the said T.H. whereby, after reciting, &c. [*Here set forth the warrant.*] Which said last-mentioned warrant, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, was delivered to said W.B. so being such constable as aforesaid, and to the said T.H. to be executed in due form of law, by virtue of which said last-mentioned warrant, the said W.B. and T.H. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did take and arrest the said J.C. by his body, and had him in their custody under and by virtue of the said last-mentioned warrant. And the jurors aforesaid, upon their oath aforesaid, do further present, that said J.C. so being in custody under and by virtue of the said last-mentioned warrant as aforesaid, W.W. late of, &c. heretofore, to wit, on the said, &c. with force and arms, at the, &c. aforesaid, in and upon the said

W. B. then and there being such constable as aforesaid, and in and upon the said T. H. in the peace of God and our said lord the king, and in the due execution of the said last-mentioned warrant then and there being, and then and there having and detaining the said T. C. in their custody, under and by virtue of the said last-mentioned warrant, and in and upon one W. M. then and there being, aiding, and assisting said W. B. and T. H. in the execution of said last-mentioned warrant, and in the peace of God and our said lord the king, did make an assault, and the said W. M. did then and there beat and ill treat, and the said J. C. out of the custody of them the said W. B. and T. H., and against the will of them the said W. B. and T. H. then and there, with force and arms, unlawfully did rescue and set at large to go wheresoever he would, and thereby then and there caused said J. C. to escape and go at large, and said J. C. did then and there escape and go at large out of the custody of them the said W. B. and T. H. and against their will whithersoever he would, to the great hindrance and obstruction of justice, in contempt of, &c. to the evil example, &c. and against the peace, &c. [*Second count, stating only the second warrant, and being nearly a copy of the latter part of the first count. Third count, for an assault on the officers in the execution of their duty. Fourth count, common assault.*]

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[*Charge a riot as post, title Riots, see form, Cro. C. C. 8th ed. 408. Cro. C. A. 300. and then proceed as follows:*] And the jurors, &c. do further present, that S. A. esquire, then and there being one of the justices, &c. lord the king, assigned, &c. [*as ante*, 182] and there and then passing and going along the said parish, in the said county, in the king's highway, there and then, and there seeing and observing upon his own view, the said J. F. C. D. &c. [*names as before*] and the said other disorderly persons, and disturbers of the peace of our said lord the king (to the jurors aforesaid as yet unknown) so then and there assembled and gathered together, and armed as aforesaid, and also then and there breaking and disturbing the peace of our said lord the king, and misbehaving themselves in manner aforesaid, he the said S. A. according to the duty of his said office as a justice of the peace of our said lord the king, for the said county of S., did then and there arrest and take the

For rescuing a rioter out of the hands of the justice of the peace, the offence being on his own view (a).

(a) See form, Cro. C. C. 8th ed. 408. Cro. C. A. 300. 2 Stark. 677.

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said J. F. in order to prevent and restrain him from any further continuing a party in the said riot and disturbance, and to cause him the said J. F. to be imprisoned in order that he might answer, and be duly punished for his offence aforesaid, according to the due form of the laws and customs of this realm, and then and there had the said J. F. in his custody on that occasion, whereupon the said J. F. C. D. &c. and the said other disorderly persons and disturbers of the peace of our said lord the king, to the jurors aforesaid as yet unknown, being so assembled and gathered together so armed as aforesaid, not regarding the laws of this realm, nor fearing the pains and penalties therein contained, and unlawfully and wickedly devising and intending to prevent, hinder, and obstruct the due course of law and justice, and to rescue him the said J. F. from and out of the custody of the said S. A. (then and there being in the due execution of his said office of such justice as aforesaid, on that occasion, and in the peace of God and our said lord the king) did then and there, with force and arms, unlawfully, riotously, routously, and tumultuously make an assault and affray upon the said S. A. in the due execution of his said office, then and there being, and him the said S. A. then and there did beat, bruise, wound, and ill treat, so that his life was greatly despaired of, and that the said C. D. &c. [*as before, except J. F.*] and the said other disorderly persons, and disturbers of the peace of our said lord the king (to the jurors aforesaid as yet unknown) being then and there so assembled and gathered together, armed as aforesaid, him the said J. F. out of the custody and power, and against the will of the said S. A. then and there unlawfully, riotously, and routously did rescue and put at large, to go unpunished for his offence aforesaid, wheresoever he would, and that the said J. F. being so arrested and taken by the said S. A. as aforesaid, himself, out of the custody and power, and against the will of the said S. A. then and there unlawfully, riotously, routously, and violently did rescue, and did escape, and go at large unpunished for his said offence, whithersoever he would, to the great damage of the said S. A. in contempt, &c. the king and his laws, to the evil example, &c. and against the peace, &c.

For rescuing a person apprehended for an affray before playhouse by two serjeants at mace,

That heretofore, to wit, on, &c. a certain sudden affray arose, and happened between one A. B. (the prisoner) late of, &c. and one C. D. (the door-keeper of the play-house) late of, &c. and in such affray the said A. B. then and there, with force and

arms, &c. and in disturbance of the peace of our said lord the king, did unlawfully, and with great force and violence, cast, fling, and throw a certain great stone at, towards, and against the said C. D., and then and there with the said stone did knock down the said C. D. to and upon the ground, to his great bodily harm, and the danger of his life. And the jurors, &c. do further present, that (the serjeants, naming them) then and there, and from thence continually, at, and after the committing the several crimes and offences hereafter mentioned (being respectively constables, at, and for, and unlawfully assigned to keep the peace of our said lord the king, within the said borough) being then and there present, and seeing and observing upon their own view the said affray, and the said A. B. so then and there, with force and arms, &c. breaking and disturbing the peace, and throwing the said stone, and misbehaving himself, in manner aforesaid, they the said constables (naming them) according to the duty of their said office, as such constables of our said lord the king, in and for the said borough, did then and there immediately arrest and take the said A. B. in order to put an end to the said affray, and to prevent and restrain him the said A. B. from committing any further breach of the peace, and to secure him until he should be carried and conveyed before some of his majesty's justices of the peace, in and for the said borough, to be dealt with according to law for his offences, and then and there had the said A. B. in their custody on that occasion, whereupon one S. B. late of, &c. and divers other disorderly persons, and disturbers of the peace of our said lord the king to the number of twenty and more, (to the jurors aforesaid as yet unknown) with force and arms, &c. at, &c. unlawfully, riotously, and tumultuously assembled, and gathered together, and being persons of turbulent tempers, and of unruly and ungovernable dispositions, and not regarding the laws of this realm, nor fearing the pains and penalties therein contained, and unlawfully and wickedly devising, and intending to prevent, hinder, and obstruct the due course of law and justice, and to rescue him the said A. B. from and out of the custody of the same constables, (then and there being in the due execution of their office, as such constables as aforesaid, and in the peace of God and our said lord the king) did then

constables, &c.
and assaulting
constable in exe-
cution of office
(a).

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(a) See form, 4 Wentw. 305, and notes to precedent, ante, 182, note (a).

and there, with force and arms, &c. unlawfully, riotously, and tumultuously make an affray, and assaulted the said constables, and then and there beat, bruised, wounded, and ill-treated them, so that their lives were greatly despaired of, and that the said S. B. and T. H., together with the said other disorderly persons, disturbers of the peace of our said lord the king (to the jurors aforesaid as yet unknown) being then and there so assembled and gathered together, with force and arms, &c. him the said A. B. out of the custody and power of the said constables, and against their wills, then and there unlawfully, riotously, and tumultuously did rescue and set at large, to go unpunished for his said offence, wheresoever he would, and that the said A. B. being so arrested and taken by the said constables as aforesaid, himself, out of the custody and power of the said constables, then and there unlawfully, riotously, roughtously, and tumultuously did rescue, and did escape and go at large unpunished for his said offence, wheresoever he would, to the great damage of the said constables, in contempt, &c. to the evil example, &c. and against the peace, &c. [*Second count for a riot and assault upon the constables. Third count for an assault by the first two rioters upon the constables in the execution of their office. Fourth count for an assault upon the constables in their private capacity.*]

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For a misdemeanor in breaking out of the King's Bench prison (to which the defendant had been committed with several others,) upon a conviction in the King's Bench for a conspiracy in pursuance of the sentence of that court (a).

[*Commencement as ante, 2.*] That heretofore, to wit, on, &c. next after, &c. in the fifty-fourth year, &c. at the Guildhall of, and within the city of London, before E. Lord E. C. J. of our said lord the king, assigned to hold pleas before the king himself, the honorable Edward Law being associated to the said C. J. according to the form of the statute in such case made and provided, one C. R. de B. Sir Thomas Cochrane, late of the parish, &c. knight, commonly called Lord Cochrane, one A. C. J. one R. G. B. one R. S. one A. Mc. R. one J. P. H. and one H. L. were in due manner duly tried by a jury of the country, upon a certain indictment before them duly preferred and found, and which was then depending and at issue in the court of our lord the king before the king himself, for divers conspiracies and misdemeanors thereby alleged, and charged in eight distinct counts to

(a) This was the indictment found against Lord Cochrane, obtained from the crown-office. This precedent should have been inserted, ante, 163.

have been by them the said C. R. de B. Sir T. C. A. C. J. R. G. B. R. S. A. Mc. R. J. P. H. and H. L. committed in London aforesaid, (and in and by which said indictment the said Sir T. C. was and is described as Sir T. C. commonly called Lord C. late of, &c. knight of the bath) and that the jury in that behalf duly chosen, tried, and sworn to speak the truth, touching and concerning the matters in the said indictment mentioned, said upon their oath, that the said C. R. de B. Sir T. C., &c. were not, nor was any of them, guilty of the premises charged upon them in and by the first and second counts of the said indictment, and that they were, and each of them was, guilty of the premises charged upon them, in and by the residue of the said indictment, in manner and form as in and by the said residue of the said indictment was alleged against them. And thereupon, afterwards, to wit, on — next after —, in the fifty-fourth year aforesaid, the said C. R. de B. Sir T. C., &c. being then brought into the said court of our said lord the king, before the king himself, the said court then being holden at W. in the county of M. it was considered and adjudged by the said court, that for their offences, whereof they were convicted as aforesaid, the said Sir T. C. and R. G. B. should severally pay a fine to our sovereign lord the king of £1000 each, of lawful money of G. B. that the said J. P. H. should pay a fine to our said lord the king of £500 of like lawful money, that the said C. R. de B. Sir T. C. R. G. B. R. S. J. P. H. and H. L. should be imprisoned in the custody of the marshal of the marshalsea of our lord the king, before the king himself, for the term of twelve calendar months then next ensuing, and that within that time the said C. R. de B. Sir T. C. and R. G. B. should be severally set in and upon the pillory, opposite to the Royal Exchange in the city of London, for the space of one hour, between the hours of twelve at noon and two of the clock in the afternoon, and the said C. R. de B., Sir T. C., R. G. B., R. S., J. P. H., and H. L. were then and there by the said court committed to the custody of the said marshal to be by him severally kept in safe custody, in execution of that judgment, and the said Sir T. C., R. G. B. and J. P. H., until they should have paid their said fines respectively, as in and by the record and proceedings of and upon the said indictment, still remaining in the said court before the king himself at Westminster aforesaid, will, amongst other things, more fully appear. And the said jurors, now here sworn, further say, that W. J. Esq. then, and still being

Second count.

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marshal of the marshalsea, aforesaid, then and there had and received the said Sir T. C. in his custody, in pursuance of the judgment and sentence aforesaid, and kept and detained him the said Sir T. C. in such custody, until the escape hereinafter next mentioned. And the said jurors, upon their oath aforesaid, do further present, that the said Sir T. C. afterwards, and before the expiration of the said twelve calendar months, for which he the said Sir T. C. was so sentenced to be imprisoned as aforesaid, and without the said fine upon him the said Sir T. C. having been paid or satisfied, to wit, on, &c. at, &c. with force and arms, unlawfully, wilfully, and contemptuously did escape and go at large, from and out of the custody of the said marshal, wheresoever he the said Sir T. C. would, and to places to the said jurors unknown, in contempt of our said lord the king, and his laws, to the evil example, &c. and against the peace, &c. And the same jurors, for our said lord the king, upon their oath aforesaid, do further present, that heretofore, to wit, on Wednesday next, after, &c. at the Guildhall, &c. before, &c. the said Sir T. C. was in due manner tried and convicted by a jury of the country, of certain misdemeanors, whereof he had before then been duly indicted, and had in the said Easter Term, in the said court of our lord the king, before the king himself at Westminster, where the said indictment was then depending, pleaded that he was not guilty, and upon which plea issue had been duly joined. And thereupon, afterwards, to wit, on — next after —, it was in and by the said court of our said lord the king, before the king himself, at Westminster aforesaid, considered and adjudged amongst other things, that for the said offences whereof he was convicted as aforesaid, the said Sir T. C. should be imprisoned in the custody of the marshal of the marshalsea of our said lord the king, before the king himself, for the term of twelve calendar months, then next ensuing, as in and by the record of the proceedings last aforesaid, still remaining in the said court of our lord the king, before the king himself, at Westminster aforesaid, will more fully appear. And the said jurors now here sworn, further say, that the said marshal then and there had, and received the said Sir T. C. in his custody, in pursuance of the same judgment and sentence, and kept and detained him in such custody until the escape hereinafter next mentioned. But the said jurors now here sworn, further say, that the said Sir T. C. afterwards, and before the expiration of the said twelve calendar months, for which he was so sen-

tenced to be imprisoned as last aforesaid, to wit, on, &c. at, &c. aforesaid, with force and arms, unlawfully, wilfully, and contemptuously did escape and go at large, from and out of such custody as last aforesaid, wheresoever he would, and to places, to the same jurors unknown, in contempt, &c. to the evil example, &c. and against the peace, &c. And the Third count, same jurors for our said lord the king, upon their oath aforesaid, do further present, that heretofore, to wit, on, &c. in the court of our said lord the king, before the king himself, then holden at Westminster, aforesaid, by a certain order and rule of the said court, then and there duly made, the said Sir T. C. by the title of, &c. being then present in the same court, was committed to the custody of the marshal of the said marshalsea of the said court, to be by him kept in safe custody, in execution of a certain judgment, whereby it was adjudged and ordered amongst other things, that for certain conspiracies and misdemeanors, whereof the said Sir T. C. had been convicted, he the said Sir T. C. should be imprisoned in the custody of the said marshal of the marshalsea of the said court, for the term of twelve calendar months, then next ensuing, as in and by such order and rule duly entered and enrolled in the said court of our lord the king, before the king himself, at Westminster aforesaid, will more fully appear. And the said jurors now here sworn, further say, that the said W. J. then, and still being marshal of the marshalsea of the said court, then and there had and received the said Sir T. C. in his custody, in pursuance of the said order and rule, and kept and detained him in such custody, until the escape hereinafter mentioned. And the same jurors upon their oath aforesaid, do further present, that the said Sir T. C. afterwards, and before the expiration of the said twelve calendar months, for which he was so committed as last aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, unlawfully, wilfully, and contemptuously did escape, and go at large from and out of such custody, as last aforesaid, wheresoever he would, in contempt, &c. to the evil example, &c. and against the peace, &c.

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That R. H. late of, &c. J. N. late of, &c. in, &c. and R. A. late of, &c. on, &c. at, &c. aforesaid, in and upon one A. &c.

For assaulting a headborough and rescuing a person in his custody (a).

(a) See form, 4 Wentw. 313. stated, 2 Stra. 1226. 5 East, 304. Ante, 182, n. (a).
It should seem that the cause of imprisonment ought to be

then and there in the peace of God and our said lord the king, and being one of the headboroughs of the parish of, &c. in the county of, &c. and in the due execution of his said office, and lawfully having the said J. N. in his custody (a), did make an assault, and him the said A. B. did then and there, to wit, at, &c. aforesaid, beat, bruise, wound, and ill-treat, so that his life was greatly despaired of, and the said R. H. and R. A. him the said J. N. on the said, &c. with force and arms, at, &c. aforesaid, out of the custody of the said A. B. and against his will, did then and there rescue and set at large whither he would go, and the said J. N. himself out of the custody of the said A. B. and against the will of the said A. B. then and there, with force and arms, did rescue and escape at large, whither he would go, in contempt, &c. to the evil example, &c. and against the peace, &c. [*Second count for an assault on the headborough in the execution of his office. Third count for an assault generally.*]

For rescuing a person taken on a bill of Middlesex (b).

That on, &c. a certain precept, commonly called a bill of Middlesex, was issued out of the court of our said lord the king, before the king himself, by which it was commanded to the sheriff of Middlesex, that he should take H. O. and J. D. (as in the precept), so that he might have their bodies before our lord the king at Westminster, on Wednesday next, after fifteen days of Easter, to answer to B. H. of a plea of trespass, and also to a bill of him the said B. H. to be exhibited against the aforesaid H. O. for 30*l.* upon promises, according to the custom of the said court, which same precept afterwards, and before the return thereof, to wit, on, &c. at, &c. aforesaid, was delivered to A. B. esquire, and C. D. esquire, sheriff of the county aforesaid, to be executed in due form of law; which said A. B. and C. D. sheriff of the county aforesaid, by virtue of the precept aforesaid, afterwards, and before the return thereof, to wit, on the said, &c. aforesaid, at, &c. aforesaid, did make a certain warrant of him the said sheriff under his

(a) See ante, 193, note (a). *Quære*, if not advisable to state the circumstances under which the officer had the prisoner in his custody, see ante, 182, note (a).

(b) See form, Cro. C. C. 8th edit. 404. Stark. 2d ed. 643.

As to the mode of stating a bill of Middlesex, *latitat*, or other process, see precedents and notes, 2 Chit. on Pleading, 4th ed. 446; and how to state the warrant, see id. 1083, 9. The process and warrant must be very carefully examined.

seal, directed to J. D. P. C. and R. R. his bailiffs of the hundred of O. in the county aforesaid; by which he commanded them, and every of them, jointly and severally, that they should take, or one of them should take, the said N. O. in the said precept named, to answer to the said B. H. of the plea of trespass aforesaid. [*Here set out the warrant.*] And that the said J. D. in the warrant aforesaid named, afterwards, and before the return of the said precept, to wit, on, &c. by virtue of the precept and warrant aforesaid, at the parish of F. within the hundred aforesaid, in the county aforesaid, did take and arrest the said H. O. in the precept aforesaid above mentioned, according to the command of the precept and warrant aforesaid, upon which the said H. O. late of, &c. aforesaid, yeoman, J. F. late of the same, yeoman, and M. W. late of the same, spinster, afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in and upon the said J. D. then being one of the bailiffs of the said sheriff of the county aforesaid, of the hundred of O. aforesaid, and in the due execution of his said office, and of the precept and warrant aforesaid, and in the peace of God and our said lord the king, then and there also being, did make an assault, and him the said J. D. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and that the said J. F. and M. W. him the said H. O. out of the custody, and against the will of the said J. D. then and there unlawfully did rescue, and put at large to go whithersoever he would; and that the said H. O. himself out of the custody and against the will of the said J. D. then and there unlawfully did rescue and escape at large whithersoever he had a mind to go, to the great hindrance and obstruction of justice, in contempt, &c. to the great damage of the said J. D. and against the peace, &c. [*Add another count for a common assault.*]

That on, &c. a certain writ of our said lord the king, commonly called a *capias ad respondendum*, was issued out of the court of our said lord the king, before the right honorable Richard Pepper, lord Alvanley, and his companions, then his majesty's justices of the bench at Westminster, in the county of Middlesex, against one T. N. directed to the sheriff of the county of Somerset, by which said writ, our said lord the king commanded the said sheriff, that he should take the said

For a rescue of a person arrested on *capias ad respondendum* and a *latitat* (a).

(a) See notes to last precedent.

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Thomas Needs, if he should be found by his bailiwick, and him safely keep, so that he might have his body before his majesty's justices at Westminster, in eight days of Saint Hilary, to answer M. C. in a plea, wherefore with force and arms, the close of M. C. at London, he broke, and other wrongs to him did, to the great damage of the said M. C. and against the peace of our said lord the king; and also that the said T. Needs might answer to the said M. C. according to the custom of his said majesty's court of C. B. in a certain plea of trespass on the case upon promises, to the damage of the said M. C. of 100*l.*; and that the said sheriff should have there that writ, which said writ duly marked for bail for 55*l.* afterwards and before the return thereof, to wit, on, &c. aforesaid, at, &c. was delivered to B. G. esquire, who then and from thence until and after the said return of the said writ, was sheriff of the said county of Somerset, to be executed in due form of law; and thereupon the said B. G. so being such sheriff as aforesaid, afterwards and before the return of the said writ, to wit, on, &c. aforesaid, at, &c. aforesaid, made his certain warrant in writing, under his seal of office of sheriff, directed to the keeper of the gaol of the said county, and also to S. H. and L. C. the said sheriff's bailiffs, and thereby commanded them, and every of them, jointly and severally, that they, or one of them, should take the said T. N. if he should be found in the said sheriff's bailiwick, and him safely keep, so that the said sheriff might have his body before the justices of our said lord the king, at Westminster, in eight days of Saint Hilary, to answer the said M. C. in the said plea of trespass, and also in the said plea of trespass on the case upon promises, in the said writ mentioned; which said warrant afterwards and before the return of the said writ, to wit, on the said, &c. in, &c. aforesaid, was delivered to the said S. H. to be executed in due form of law. And the jurors, &c. do further present, that on the said, &c. a certain other writ of our said lord the king, called a *pluries latitat*, was issued out of the court of our said lord the king, before the king himself, the said court then and still being holden at Westminster aforesaid, in the said county of Middlesex, against the said T. N. directed to the sheriff of the said county of S. by which said last-mentioned writ, our said lord the king commanded the said sheriff, that he should take the said T. N. if he should be found in his bailiwick and him safely keep, so that he might have his body before our said lord the king at Westminster aforesaid, on — next after —, to

answer T. L. in a plea of trespass, and also to a bill of the said T. L. against the said T. N. for £—, upon promises, according to the custom of the said court of our said lord the king, before the king himself, to be exhibited, and that the said sheriff should have there then that writ, which said last-mentioned writ, was then and there duly indorsed for bail for £—, and which last-mentioned writ, so indorsed for bail as aforesaid, afterwards, before the said return thereof, to wit, on, &c. at, &c. aforesaid, was delivered to the said B. G. esq., who thence and from thenceforth until, and at and after the return of the said last-mentioned writ, was sheriff of the said county of S. to be executed in due form of law; and thereupon the said B. G. so being such sheriff as aforesaid, afterwards, and before the return of the said last-mentioned writ, to wit, on, &c. last aforesaid, in, &c. aforesaid, made his certain other warrant in writing under his seal of office of sheriff aforesaid, directed to the keeper of the gaol of the said county, and to W. S. and R. G. the said sheriff's bailiffs, and thereby commanded them jointly and severally, that they should take T. N. if he should be found in his the said sheriff's bailiwick, and safely keep him, so that the said sheriff might have the body of the said T. N. before our said lord the king at Westminster aforesaid, on — to answer the said T. L. in the plea, and to the bill in the said last-mentioned writ mentioned, which said last-mentioned writ afterwards, and before the return of the said last-mentioned writ, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said W. S. and R. G. to be executed according to due form of law; by virtue of which said first-mentioned writ and warrant, the said S. H., and by virtue of which said writ and warrant, secondly above-mentioned, the said W. S. and R. G., before the time appointed for the return of the said writs or either of them, to wit, on, &c. and within the bailiwick of the said sheriff, to wit, in, &c. aforesaid, took and arrested the said T. N. by his body, and had him in their custody for the causes in the said writs and warrants mentioned; and the said T. N. so being in custody under and by virtue of the said writs and warrants as aforesaid, the said T. N. and divers other persons to the jurors unknown, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, with force and arms, made an assault upon the said S. H. W. S. and R. G. then and there being in the peace of God and our said lord the king, and then and there being bailiffs of the said sheriff of the said county of S. as aforesaid, and then and

there having and detaining the said T. N. in their custody under the said arrest, writs, and warrants as aforesaid, and then and there unlawfully and against the will of the said S. H. W. S. and R. G. under and by virtue of the said arrest, writs, and warrants as aforesaid, from and out of their custody, and thereby then and there caused the said T. N. to escape and go at large, and the said T. N. did thereby then and there escape and go at large, out of the custody and against the will of the said S. H. W. S. and R. G. wheresoever he would, to the great hindrance and obstruction of justice, in contempt, &c. to the great damage of the said M. C. and L. and against the peace, &c.

For a rescue of one of defendants in custody of an officer of the Marshalsea Court upon process (a).

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That on, &c. our said lord the king, by his writ issued out of the court of our said lord the king of his palace of Westminster, under the seal of the said court, bearing date the same day and year aforesaid, directed to the bearers of the verge of the household of our said lord the king, officers, and ministers of the court of our said lord the king, of his palace of Westminster, and every of them, did command them, and every of them, that they should take, or one of them should take, by their bodies R. A. and W. C. if they should be found within the jurisdiction of the court aforesaid, and them safely keep, so that they might have, or one of them might have, their bodies before the judges of the court aforesaid, at the then next court of the palace of our said lord the king of Westminster aforesaid, on, &c. then next following, to be holden at S. in the county of S. to answer to T. W. of a plea of trespass upon the case, to the damage of the said T. W. of ninety-nine shillings, to wit, at, &c. which said writ, afterwards, and before the return of the same, to wit, on, &c. at, &c. and within the jurisdiction of that court, was delivered to one G. N. then and there being one of the bearers of the verges of our said lord the king, officers, and ministers of the said court of our said lord the king, to be executed in due form of law; by virtue of which said writ, the said G. N. afterwards, and before the return thereof, to wit, on, &c. aforesaid, at, &c. aforesaid, and within the jurisdiction of that court, did take and arrest the body of the said R. A. in the writ aforesaid named, and him the said R. A. in his custody, by virtue

(a) See form Cro. C. C. 8th edit. 403. 2 Stark. 2d edit. 642.

of the said writ, then and there had; and that the said R. A. late of, &c. and C. D. late of, &c. afterwards, to wit, on the said, &c. with force and arms, at, &c. in and upon the said G. N. then and there as aforesaid, being one of the bearers of the verges of the household of our said lord the king, officers, and ministers of the court aforesaid, and in the peace of God and our said lord the king, and in the due execution of his said office, then and there also being, did make an assault, and him the said G. N. then and there did beat, wound, and ill-treat, so that his life was greatly despaired of; and that the said C. D. him the said R. A. out of the custody of the said G. N. and against the will of the said G. N. then and there, with force and arms, unlawfully did rescue and put at large to go whithersoever he would; and that the said R. A. himself out of the custody of the said G. N. and against the will of the said G. N. then and there, with force and arms, unlawfully did rescue and escape at large whithersoever he had a mind to go, to the great hindrance and obstruction of justice, in contempt of our said lord the king and his laws, to the great damage of the said G. N. and against the peace, &c. [*Add a count for a common assault.*]

That at the court of great sessions, and general gaol delivery of our said lord the king, of the county of D. holden at, &c. in the county aforesaid, before the honorable J. M. chief justice of our said lord the king, of his court of great session of and for the said county of D. and the honorable D. B. his said majesty's other justice there, justices of our said lord the king, duly appointed and empowered to deliver his gaol of the said county of D. of the prisoners therein being, on Wednesday, the 9th day of August, in the 20th year, &c. by the oaths of Sir W. W. W. baronet, the honorable T. F., Sir F. C. baronet, R. W. esquire, &c. [*the names of all the grand jurors*], good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said lord the king, and the body of the said county, it was presented as follows: [*here set out the indictment, and proceed as follows.*] And the said Salusbury Davies and George Nailor [*the parties indicted*] came in their own person, under the custody of William Thomas, esquire, sheriff of the county aforesaid, to the bar there

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Indictment at common law for assaulting gaoler and rescuing two prisoners who had been indicted in the court of great session in Denbighshire, and sentenced to be imprisoned, against the prisoners and third persons (a).

(a) See form, Cro. C. C. 405. Cro. C. A. 293, see note to the precedent, ante, 182, n. (a). 190.

brought, and the said indictment being read to them, it was asked of them whether they were guilty of the premises charged upon them in the said indictment, or not; and the said S. D. and G. N. then and there said, that they were not guilty thereof, and thereupon they put themselves upon their country; and H. H. esquire, attorney-general of our said lord the king, who prosecuted for our said lord the king in that behalf, did so likewise, and thereupon a jury was immediately made, and so forth, and the jurors thereupon impannelled, to wit, [*here the names of the petit jury*] being called, in like manner came, who, to say the truth of the premises being chosen, tried and sworn upon their oath, said that the said S. D. and G. N. were severally guilty of the premises in the said indictment, charged upon them in manner and form as in and by the said indictment was specified. And the jurors now here sworn, upon their oath aforesaid, do further present, that at the said gaol delivery of our lord the king, so holden as aforesaid, by the oaths of the said Sir W. W. W. &c. [*as before*] good and lawful men of the county aforesaid, then and there so sworn and charged to inquire for our said lord the king, and the body of the said county as aforesaid, it was also presented as follows: [*here set out another indictment*] And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, that the said S. D. then being at the said bar in his own proper person as aforesaid, having heard the said last-mentioned indictment read to him, it was asked of him whether he was guilty of the said premises charged upon him in the said last-mentioned indictment or not, and the said S. D. then and there said, that he was not guilty thereof, and thereupon he put himself upon the country; and the said H. H. esquire, attorney-general of our said lord the king, who prosecuted for our said lord the king in that behalf, did so likewise, and thereupon a jury was immediately made, and so forth, and the jurors thereupon impannelled, to wit, J. L. &c. [*as before*] being called, in like manner came, who, to say the truth of the last-mentioned premises being chosen, tried, and sworn, upon their oath said, that the said S. D. was guilty of the premises in the said last-mentioned indictment charged upon him, in manner and form as in and by the said last-mentioned indictment was specified, therefore it was, on, &c. adjudged by the court of the said gaol-delivery, that the said S. D. for the said offences respectively, of which he was so found guilty as aforesaid, should be imprisoned in the common gaol for the said county of D. for the

space of two years and six calendar months from that day, and then to enter into a recognizance in the sum of one hundred pounds, for his good behaviour for the space of three years then next following; and it was also then adjudged by the said court, that the said G. N. for the said offence, of which he was so found guilty as aforesaid, should be imprisoned in the common gaol for the said county, for the space of two years from that day, and then to enter into a recognizance in the sum of fifty pounds, for his good behaviour for the space of three years, then next following. And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, that the said S. D. and G. N. were thereupon, on, &c. last aforesaid, at, &c. aforesaid, delivered into the custody of the said W. T. esquire, then being sheriff of the said county of Denbigh, in execution of the said judgments; and the said sheriff then and there had the said S. D. and G. N. in execution as aforesaid, in the custody of Joseph Stoddard, then and there being keeper of the gaol of the said county of D. for the causes aforesaid, and the said S. D. late of, &c. G. N. late of, &c. J. W. late of, &c. and J. D. late of, &c. whilst the said S. D. and G. N. were so in custody as last aforesaid, for the causes aforesaid, on the same day and year last aforesaid, with force and arms, at, &c. in and upon the said J. S. (then and there being keeper of the said gaol as aforesaid, and in the peace of God and our said lord the king, and in the due execution of his said office, then and there being) did make an assault; and the said J. W. and J. D. then the said S. D. and G. N. out of the custody and against the will of the said J. S. then and there, unlawfully did rescue and put at large to go where they would; and that the said S. D. and G. N. themselves out of the custody and against the will of the said J. S. then and there unlawfully did rescue, and did escape and go at large where they would; to the great damage of the said J. S. to the hindrance and obstruction of justice, to the evil example, &c. and against the peace, &c.

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That on, &c. at, &c. one J. W. was brought by J. B. then being one of the constables of the same parish, before J. P. esq. then and yet being one of the justices of our said lord the

Indictment for forcibly rescuing a person from a constable charged with feloniously, &c. sending a letter without a name subscribed, demanding money, on 9 Geo. 4. c. 23 (a).

(a) See other precedents, Cro. C. C. 82. Stark. 2d edit. 578. *The offence*. This indictment is founded on the Black Act, 9 Geo. 1. c. 22, which, after making several acts felo-

king, assigned, &c. [*as ante*, 182,] and the said J. W. then and there was charged upon the oath of S. F. for feloniously, knowingly, and maliciously sending a certain letter to J. F. demanding money, and the said J. W. was then and there examined before the said J. P. the said justice, touching and concerning the aforesaid felony, and thereupon the aforesaid J. P. the said justice, then and there in due form of law, did make a certain warrant under his hand and seal, bearing date, &c. directed, &c. [*here set out the warrant.*] which same warrant afterwards, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said J. B. then and there being one of the constables of the said parish, and the said J. B. him the said J. W. in his custody by virtue of the said warrant, and for the cause aforesaid, then and there had, and that the said J. W. late of, &c. E. W. late of, &c. and T. W. late of, &c. being ill-designing and disorderly persons, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, but wickedly and unlawfully contriving and intending

nies, and among others, "the knowingly sending any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing," proceeds to include in the same penalty those who may "forcibly rescue any person being lawfully in custody of any officer or other person," see *ante*, 182, note (a). This act, together with the 27 Geo. 2. c. 15. 30 Geo. 2. c. 24, relating to the sending of threatening letters in the cases therein mentioned, as well as other provisions in the 9 Geo. 1. c. 22, are repealed by the 4 Geo. 4. c. 54. s. 3, by which it is enacted, that if any person shall knowingly and wilfully send or deliver any letter or writing, with or without any name or signature subscribed thereto, or with a fictitious name or signature, demanding money or other valuable thing, or threatening to kill or murder any one, or

to burn or destroy his or their houses, &c., or shall knowingly and wilfully send or deliver any such letter or writing, threatening to accuse any one of any crime punishable by law with death, transportation, or pillory, or of any infamous crime, with a view or intent to extort or gain money, security for money, goods, &c. from the person threatened, or shall procure, counsel, aid, or abet, the commission of the said offences, or any of them, or shall forcibly rescue any person being lawfully in custody for any of such offences, the offender shall be deemed guilty of felony, and be liable, at the discretion of the court, to be transported for life, or not less than seven years, or imprisoned only, or imprisoned with hard labour, for not exceeding seven years. The 6 Geo. 4. c. 19, points out what particular crimes shall be deemed infamous, within the meaning of the above act.

to prevent the due course of law, and to cause the said J. W. to escape with impunity; afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in and upon the said J. B. (then and there being such constable as aforesaid, and then and there lawfully having the said J. W. in his custody, by virtue of the said warrant for the cause aforesaid,) in the peace of God and our said lord the king, and in the due execution of his said office, then and there being, feloniously did make an assault; and that the said E. W. and T. W., the said J. W. out of the custody of the said J. B. and against the will of him the said J. B. then and there, with force and arms, unlawfully, forcibly, and feloniously did rescue and put at large to go where he would, to the great hindrance of justice, in contempt, &c. to the evil example, &c. against the form of the statute, &c. and against the peace, &c.

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That on, &c. one M. P. late of, &c. in due form of law, did take and distrain one walnut-tree chest of drawers, and one feather bed, of the value of forty shillings, of the goods and chattels of one A. H. widow, then being in a certain room in and parcel of the dwelling-house of the said M. P. situate in, &c. aforesaid, which same distress was taken by him the said M. P. for the sum of three pounds and ten shillings, being then due for rent, for one whole year, in arrear from the said A. H. to him the said M. P. for the lodging aforesaid; and that the said M. P. the said goods and chattels then and there had, and detained in his custody for the cause aforesaid. And the jurors, &c. do further present, that A. W. late of, &c. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, the said goods and chattels, so as aforesaid by the said M. P. taken and distrained, and in the custody of him the said M. P. then and there being, from and out of the custody, and against the will of him the said M. P. then and there unlawfully, and injuriously did rescue, take, and carry away, (the said sum of three pounds and ten shillings, for the said rent in arrear, as aforesaid due, nor any part thereof being then paid) and other wrongs to the said M. P. then and there did, to the great damage of the said M. P. and against the peace, &c.

For rescuing
goods distrained
for rent (a).

(a) See other precedents, nature, see post, 204, n. (a).
Cro. C. C. 7th ed. 409. 66. Com. Dig. tit. Rescous, A. &
Stark. 2d ed. 644. As to an D. 3.
indictment for offences of this

For assaulting bailiff, and rescuing goods distrained for rent of a lodger (b).

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Second count.

That on, &c. and continually, afterwards, until, &c. one J. D. did hold of one J. M. a certain lodging room, being part and parcel of a certain messuage, situate, &c. by demise from the said J. M. at, and under the rent of, &c. by the year, payable quarterly; and that on the said, &c. the sum of, &c. for one year's rent of the said room, ending on the said, &c. became and was due, and in arrear from the said J. D. to the said J. M. whereupon on, &c. at, &c. aforesaid, the said J. M. in due form of law, did take, seize, and distrain divers goods and chattels of the said J. D. hereinafter specified, and set forth, to the value of, &c. for the said sum of, &c. for rent as aforesaid, so as aforesaid due, and in arrear, and that one A. B. was by the said J. M. on the said, &c. at, &c. aforesaid, put in possession of the said goods and chattels, which said goods and chattels so as aforesaid taken, seized, and distrained, were as follows, to wit, [*here set out the goods.*] And the jurors, &c. do further present, that one J. C. late of, &c. aforesaid, together with divers other malefactors, to the jurors aforesaid as yet unknown, on, &c. with force and arms, &c. at, &c. aforesaid, in and upon the said A. B. in the peace of God and our said lord the king, then and there being, did make an assault, and the said goods and chattels, so as aforesaid, for the cause aforesaid taken, seized, and distrained, and then and there being in the custody and possession of the said A. B. from and out of the custody and possession, and against the will of the said A. B. unlawfully, and injuriously did rescue, and the said A. B. from and out of the custody and possession of the said goods and chattels, then and there, with force and arms, at, &c. aforesaid, unlawfully, unjustly, and against the will of the said A. B. did force and drive away (the said sum of, &c. so due for rent as aforesaid, or any part thereof, not being then paid or satisfied to the said J. M.) and other wrongs, to the said J. M. and A. B. then and there did, to the great damage of the said J. M. and A. B. and against the peace, &c. That the said J. C. together with divers malefactors to the jurors aforesaid as yet unknown, on the said, &c. with force and arms, at, &c. aforesaid, in and upon the said A. B. in the peace of God and our said lord the king, then and there being, did make an assault, and of the goods and chattels of the said J. D. then lately, before, to wit, on the same day and year above mentioned, duly and lawfully taken, seized, and distrained by the said J. M. for

(b) See precedent, 4 Wentw. 314. and supra, note (a), *Quare* this precedent.

the sum of forty shillings, then due from the said J. D. to the said J. M. for rent in arrear (the same goods and chattels then being in the custody and possession of the said A. B.) from and out of the possession, and against the will of the said A. B. then and there, with force and arms, unlawfully and injuriously did rescue, and the said A. B. from and out of the custody and possession of the said goods and chattels, then and there, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, injuriously, and against the will of the said A. B. did force and drive away, the sum of forty shillings, so due for rent as aforesaid, or any part thereof, not being then paid and satisfied, to the said J. A. to the great damage of the said J. M. and against the peace, &c.

That on, &c. and continually afterwards, until, &c. one M. E. did hold of one J. W. a certain room or apartment, with the appurtenances, being part and parcel of a certain messuage or dwelling-house of him the said J. W. situate, &c. by virtue of a certain demise thereof, made by and from the said J. W. to the said M. E. at, and under the rent of fifteen shillings, reserved and made payable by the said demise, to the said J. W. on the said, &c. and that on the said, &c. the said sum of fifteen shillings was due, in arrear, and unpaid, for the rent aforesaid, by virtue of the said demise to him, the said J. W. And the jurors, &c. do further present, that the said M. E. on, &c. at, &c. aforesaid, did fraudulently and clandestinely convey and

For an assault and rescuing goods seized as a distress for rent after a fraudulent removal (a).

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(a) See precedents, Cro. C. C. 7th ed. 173. Stark. 2d ed. 644, and ante, 201, note (a). By 8 Ann. c. 14. s. 2, it is enacted, that in case any lessee of any messuages, &c. on demise, whereof any rents shall be reserved or made payable, shall fraudulently and clandestinely convey and carry off from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of the rent, the lessor or landlord, or his agent, within five days, may take and seize such goods and chattels wherever they may be found, as a distress, and sell them in the same way as if

they had been regularly distrained on the premises; and by 11 Geo. 2. c. 19. s. 1. the time is enlarged to thirty days. So that rescuing goods seized thus after a fraudulent removal is a similar offence to rescuing them after a regular distress. This statute applies only to the tenant's goods being fraudulently removed, and even protects subsequent *bonâ fide* sales, 5 M. & S. 38. As to what is proof of fraud, &c. see 9 Price, 301. 3 D. & R. 501. The removal need not be clandestine as well as fraudulent, 4 D. & R. 33, and it is immaterial at what time the goods were removed, whether by day or night, id. 1 Carr. Rep. 121.

carry off from the said demised premises, his goods and chattels, that is to say, one pewter dish, &c. [*here mention the goods*] of the value of the said sum of fifteen shillings, with intent to prevent the said J. W. the lessor aforesaid, from distraining the same for the said rent so reserved, in arrear, due, and unpaid, as aforesaid; whereupon the said J. W. afterwards, and within the space of five days next ensuing the said conveying and carrying off the same goods, to wit, on, &c. at, &c. aforesaid, did find the said goods and chattels, and the same goods and chattels so found, did then and there in due form of law seize as a distress for the said rent so due, and in arrear as aforesaid, and being also then unpaid, and the said goods and chattels in his custody and possession, for the cause aforesaid, then and there had, and that the said M. E. late of, &c. aforesaid, and S. his wife, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, in and upon the said J. W. in the peace of God and our said lord the king, then and there being, did make an assault, and the said goods and chattels (so as aforesaid, for the cause aforesaid taken and seized) out of the possession, and against the will of the said J. W. unlawfully and injuriously did take, rescue, and carry away (the said sum of fifteen shillings, so due for rent as aforesaid, or any part thereof, not being then paid or satisfied, to the said J. W.) and other wrongs to the said J. W. then and there did, to the great damage of the said J. W. and against the peace of our said lord the king, his crown and dignity. [*Here add a count for a common assault.*]

For a rescue of cattle taken damage feasant, before they were impounded (a).

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That T. K. on, &c. at, &c. had taken and distrained a certain gelding, then being in a certain close of the said T. K. called, &c. situate, lying, and being in, &c. feeding, and depasturing upon the grass there then growing, and doing damage there to the said T. K. and was then and there about to impound the said gelding, as, for, and in the name of, a distress for the said damage, so there done and doing to him the said T. K. according to the law and custom of this realm. And the jurors, &c. do further present, that W. H. late of, &c. inn-keeper, then and there, and whilst the said T. K. was so about to impound the said gelding as aforesaid, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully rescue the said gelding from and out of the custody of the said

(a) See note to precedent, post, 204, n. (a).

T. K. and did then and there unlawfully take, lead, and drive away the same, to the great damage of the said T. K. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

That on, &c. at, &c. one J. C. took and distrained one mare and two colts of the cattle of one J. S. late of the parish aforesaid, yeoman, of the price of twenty pounds, in and upon a certain close or parcel of land, of him the said J. C. called, &c. situate and being at, &c. aforesaid, wrongfully feeding and depasturing upon the grass growing in and upon the said close and parcel of land, and doing damage to him the said J. C. there, as a distress for the damage then and there done and doing by the said cattle, and the said mare and colts so taken and distrained as aforesaid, he the said J. C. on the same day and year aforesaid, at, &c. aforesaid, in the common pound of the hundred of B. in the said parish called B. pound, impounded and kept, and detained the same in the said common pound there as a distress for the cause aforesaid. And the jurors, &c. do further present, that the said mare and colts being so impounded and remaining in the said common pound there as a distress for the cause aforesaid, the said J. S. on, &c. aforesaid, with force and arms, at, &c. aforesaid, the said common pound broke and entered, and the said mare and colts from and out of the same, without the licence and against the will of the said J. C. and without any satisfaction having been made to the said J. C. for the said damage done by the said mare and colts as aforesaid, unlawfully did rescue, take, lead, and drive away, in contempt, &c. to the evil example, &c. and against the peace, &c.

For rescuing cattle out of pound, taken as a distress damage feasant (a).

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That heretofore, to wit, on, &c. at, &c. one W. S. as the bailiff of one W. K. and by his command, in due form of law,

For breaking a pound and letting out a mare (b).

(a) See other precedents, Cro. C. C. 8th edit. 210. Cro. C. A. 299. 4 Wentw. 314. It has been doubted whether pound-breach, unaccompanied by a breach of the peace, is an indictable offence, or only a ground for a civil action, 4 Leon. 12. And it is certain that, in general, no indictment can be sustained for a mere trespass committed without vio-

lence, 3 Burr. 1701. 1731. But pound-breach is an injury and insult to public justice, and *as such* seems to be indictable at common law. Hawk. b. 2. c. 21. s. 20. Id. c. 10. s. 56. Fitz. N. B. 102. Com. Dig. Rescous, D. 3. Cro. C. A. 299. Cro. C. C. 665. 7th ed.

(b) See note to precedent, ante, 204.

took, and distrained one mare, the property of one T. B. late of, &c. aforesaid, higler, of the value of £20, in and upon a certain close of him the said W. K. situate and being, in, &c. aforesaid, and there wrongfully, and unlawfully feeding, and depasturing upon the grass and herbage of the said W. K. then growing and being in and upon the said close, and doing damage there to him the said W. K. as a distress for the damage so then and there done and doing by the said mare, and the said mare so taken and distrained as aforesaid, he the said W. S. as such bailiff of the said W. K. and by his command, on the, &c. aforesaid, in, &c. aforesaid, in a certain common and open pound of and within the said parish impounded, and the same mare was then and there duly and lawfully secured and kept and detained in the said common pound there by W. K. then and there being the lawful keeper of the said pound, as a distress, for the cause aforesaid. And the jurors, &c. do further present, that the said mare being so impounded, and remaining in the said common pound there as a distress for the cause aforesaid, the said T. B. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, the said common pound broke and entered, and the said mare from and out of the same, without the licence or consent, and against the will of the said W. K. or of the said W. S. or of the said W. M. without any satisfaction having been made to the said W. K. for the said damage done by the said mare as aforesaid, unlawfully did rescue, take, lead, and drive away, to the great damage of the said W. K. in contempt, &c. and to the great hindrance of public justice, to the evil example, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, to wit, on, &c. aforesaid, at, &c. aforesaid, when the said W. K. had then and there taken and distrained a certain other mare in a certain close, situate in, &c. aforesaid, treading down, trampling upon, consuming and spoiling the grass growing in the said close, and doing damage therein to the said W. K. and had impounded the said mare in a certain common and open pound in the parish of Headley aforesaid, as a distress for the said damage, according to the laws and customs of England, he the said T. B. with force and arms, &c. afterwards, to wit, on, &c. aforesaid, broke and entered the said last-mentioned pound, and rescued and took away from and out of the said last-mentioned pound, the said last-mentioned mare so impounded therein as aforesaid, to the great damage of the said W. K., in contempt, &c. and against the peace, &c.

Second count.

That heretofore, to wit, on, &c. at, &c. one L. Y. esq. as executor of the last will and testament of Sir W. Y. baronet, deceased, took and distrained certain crops of wheat, then growing in and upon certain closes, to wit, a certain close, called, &c. a certain close, called, &c. and a certain close, called, &c. being parts and parcels of a certain farm and lands, situate, lying, and being in, &c. aforesaid, and of great value, to wit, of the value of £300, of lawful money of Great Britain, as a distress for certain arrears of rent, to wit, for the sum of £—, due and owing from W. T. late of, &c. aforesaid, yeoman, to the said Sir M. Y. bart. deceased, in his life-time, and at the time of his death, for the said farm and lands, and which, at the time of the making of the said distress, was, and still is due and unpaid to the said L. Y. as such executor as aforesaid, and before the committing of the said offence by the said W. T. hereinafter mentioned, to wit, on, &c. at, &c. aforesaid, impounded, and secured the said crops of wheat, in and upon the said lands and premises, as a distress for the cause aforesaid, and with intent to appraise and sell, and dispose of the same according to the statute in such case made and provided; nevertheless the said jurors, &c. do further present, that the said crops of wheat having been so taken and distrained as aforesaid, and so remaining impounded and secured upon the said lands and premises as aforesaid, the said W. T. not regarding the statute in that case made and provided, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, broke and entered the said pound and closes of lands, in which the said crops of wheat were so impounded and secured as a distress as aforesaid, and then and there without the leave and against the will of the said L. Y. and without any satisfaction having been made to the said L. Y. executor as aforesaid, for the said arrears of rent so due and owing as aforesaid, or any part thereof, unlawfully and wilfully did rescue, cut down, gather, and carry away the said crops of wheat, so distrained and impounded, and secured as aforesaid, the same being then and there of great value, to wit, of the value of £—, of like lawful money, contrary to the form of the statute in such case

For pound breaches by cutting down corn impounded for rent (a).

(a) See notes to precedent, ante, 204, note (a). The stat. 11 Geo. 2. c. 19, authorizes a distress of growing corn, and in the 10th sect. enacts, that if any pound breach of stock, &c.

shall be made, the person aggrieved thereby shall have the same remedy as in cases of pound breach, provided for by statute of William. See notes to the indictment, ante, 204, 5.

Second count.

made and provided, in contempt, &c. to the evil example of, &c. and against the peace, &c. And the jurors, &c. do further present, that heretofore, to wit, on, &c. at, &c. the said L. Y. took and distrained certain other crops of great value, to wit, of the value of £—, of like lawful money, then growing in and upon certain closes and lands, situate, lying, and being in, &c. aforesaid, as a distress for certain arrears of rent, to wit, for the sum of £—, due and owing from the said W. T. for the said lands, amongst other things, and which, at the time of the making the said distress, was, and still is due and unpaid to the said L. Y.; and that the said L. Y. before the committing the offence by the said W. T. hereinafter mentioned, to wit, on, &c. at, &c. aforesaid, impounded and secured the said last-mentioned crops of corn, in and upon the said last-mentioned lands, as a distress for the cause last aforesaid, according to the form of the statute in that case made and provided; nevertheless the jurors aforesaid, upon their oath aforesaid, do further present, that the said crops of corn so having been taken and distrained as aforesaid, and so remaining impounded and secured upon the said last-mentioned lands as aforesaid, the said W. T. not regarding the statute in that case made and provided, afterwards, to wit, on, &c. aforesaid, with force and arms, &c. at, &c. broke and entered the said pound and land, in which the said crops of corn were so impounded and secured as a distress as last aforesaid, and then and there, without the licence and against the will of the said L. Y. and without any satisfaction having been made to the said L. Y. for the said last-mentioned arrears of rent so due and owing as aforesaid, unlawfully and wilfully did rescue, cut down, gather, and carry away the said crops of corn so distrained, impounded, and secured as last aforesaid, the same being of great value, to wit, of the value of £—, of like lawful money, contrary to the form of the statute, &c. in contempt, &c. [*as before.*]

For misdemeanor in pulling down the cage, prison, and stocks at Ramsgate, in Kent (a).

That W. G. late of, &c. innkeeper, devising and intending to impede the due course of law, and to prevent the punishment of persons guilty of trespasses and other trivial offences and misdemeanors committed within the village of R. aforesaid, on, &c. with force and arms, to wit, with pickaxes, hatchets, hammers, and other instruments, at, &c. aforesaid, the cage,

prison, and the stocks of our lord the king then and there of right and according to law erected, set up, and being for the safe custody and detention, and for the due punishment and correction of persons guilty of trivial offences or misdemeanors within the village of R. aforesaid, unlawfully pulled down, demolished, prostrated, and wholly destroyed, in contempt, &c. to the great obstruction and hindrance of the due execution of justice, and against the peace, &c. And the jurors, &c. further present, that the said W. G. devising and intending as aforesaid, on, &c. aforesaid, with force and arms, to wit, with pickaxes, hatchets, hammers, and other instruments, at, &c. aforesaid, the cage-prison of our said lord the king then and there of right and according to law erected, set up, and being for the safe custody and detention, and for the due punishment and correction of persons guilty of having committed any trivial offence or misdemeanor within the village of R. aforesaid, unlawfully pulled down, demolished, and prostrated, and wholly destroyed, in contempt, &c. [*as before.*] Third count same as last, only instead of cage-prison, say, other the stocks. Fourth count like second, only say, cage-prison and stocks, unlawfully caused and procured to be pulled down, &c. Fifth like second, only caused and procured the cage-prison to be pulled down. Sixth like second, for causing and procuring the stocks only to be pulled down.

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Second count.

[*Commencement as ante*, 6.] That heretofore, to wit, on, &c. a special session of oyer and terminer and gaol delivery was holden by adjournment in and for the county of Kent at Maidstone in the said county, before Sir F. B. bart. one of the justices of our said lord the king of his court of Common Pleas,

Information for a riot, assault, and striking in open court, on the holding of a special commission(a).

(a) See other precedents, 4 Ersk. Spee. 432. 1 East P. C. 408, 410. *As to the offence*, see in general Hawk. b. 2. c. 21. 4 Bla. Com. 124. 1 East P. C. 408 to 410. and see precedents for slander of justices, &c. in execution of their office, post, title Libels. By the ancient common law, striking in the courts of superior jurisdiction, or drawing a sword therein, was a capital felony; at the present day, it is punishable

with the loss of the right hand, imprisonment for life, and the forfeiture of goods and chattels as well as the profits of lands during life, Hawk. b. 2. c. 21. s. 3. 4 Bla. Com. 125. This punishment is in pursuance of the common law; for it is doubtful whether 33 H. 8. c. 12. s. 7. respecting striking within royal palaces extends to any place where the king is not actually resident, Hawk. b. 2. c. 21. s. 2. The infliction of

J. H. esq. one other of the justices of our said lord the king of his court of Common Pleas, Sir S. L., knight, one of the justices of our lord the king assigned to hold pleas before the king himself; S. S. esquire, one of the serjeants of our said lord the king learned in the law, and others their fellows, justices and commissioners of our said lord the king, assigned by letters patent of our said lord the king under the great seal of Great Britain, to inquire by the oath of good and lawful men of the said county of K., of all high treasons and misprisions of high treason, other than such as relate to the coin of our said lord the king within the county aforesaid, done, committed, or perpetrated; and the said treasons and misprisions of treason according to the laws and customs of England, for that time to hear and determine; and also assigned and constituted by the

the severe and barbarous punishment of amputating the hand has very rarely been inflicted; not more than ten cases, at the utmost, occurring in our history, 11 Harg. St.Tr. 16. There is a very curious account given in the St. Tr. (11 Harg. ed. 16.) of the various ceremonies attendant on its execution. It was in 33 H. 8. A. D. 1541. Sir Edmond Knevet being sentenced to undergo this penalty, is there recorded to have requested that his left instead of his right hand might be taken, so that he might still be able to do his majesty service; on the report of which magnanimous request to the king, the whole sentence was forgiven. In the case of the above information against Lord Thauet and Mr. Fergusson, it was thought by Lord Kenyon that judgment for the amputation must be awarded, and it was respited in order that this point might be decided; but, before the defendants were again brought up to receive sentence, the attorney-general stated that he had received his majesty's royal commands and

warrant concerning the prisoners, and the aforesaid misdemeanors, &c. under the sign manual; whereon his majesty discharged them from such parts of the information on which any doubt had arisen or might arise whether the judgment thereon were discretionary in the court, and authorized the attorney-general to enter a *nolle prosequi* on such parts, and pray judgment only on such charges as left the punishment in the discretion of the court. Accordingly a *nolle prosequi* was entered on the first three counts, and on the 4th and 5th the court gave judgment, 1 East P. C. 409, 410. But in order to warrant the severer punishment, the indictment must allege the offence to have been committed either before the king or his justices, 1 East P. C. 410. The *rescue* of a prisoner in any superior court without actual striking, subjects the offender to imprisonment for life, forfeiture of goods, and the loss of profits of lands, while he lives, 1 East P. C. 410.

letters patent of our said lord the king under the great seal of Great Britain, to deliver the gaol of our said lord the king of the said county of K., of the prisoners therein being and detained, on, &c. or who should be therein detained before, &c. for or on account of any high treasons or misprisions of high treason, other than such as relate to the coin of our said lord the king. At which said session so then and there holden as aforesaid, before the justices and commissioners above-named, and others their fellows as aforesaid; came Arthur O'C., esquire, in the custody of J. P., esquire, sheriff of the said county of K., and which said A. O'C. was and had been detained in the gaol of our said lord the king of the said county of K., before the 10th day of April in the year aforesaid, to wit, on, &c. for and on account of high treason, to wit, at M. aforesaid. And the said A. O'C. being then and there, to wit, at the said session so holden as aforesaid, brought to the bar in his own proper person, was then and there committed by the justices and commissioners above-named, and others their fellows aforesaid, to the custody of the same sheriff; and so being in the custody of the said sheriff, was then and there at the same session so holden as aforesaid, tried by the jurors of a certain jury of the county of K. in that behalf duly impanelled and returned and chosen, tried, and sworn, for and upon certain high treasons not relating to the coin of our said lord the king, specified and charged upon him in and by a certain indictment, theretofore, to wit, at a previous holding of the same session, before the said Sir F. B. and J. H. and others, their fellows, justices and commissioners, assigned as aforesaid, duly found, returned, and presented against him by the jurors of a certain other jury of the said county of K. duly sworn and charged to inquire for our said lord the king for the body of the same county, and to which said indictment he had theretofore pleaded that he was not guilty of the premises therein specified and charged upon him. And the said A. O'C. then being in the custody of the said sheriff as aforesaid, was then and there at the same session, by the jurors by whom he was so tried as aforesaid, found not guilty of the premises in and by the said indictment specified and charged upon him as by the record and proceedings thereof more fully appears: And the said attorney-general for our said lord the king, further giveth the court here to understand and be informed, that the right hon. S. earl of T. late of M. in the county of K., R. F. late of the same place, barrister at law, T. G. B. late of the same

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place, esquire, D. O'B. late of the same place, esquire, and T. T. late of the same place, esquire, well knowing the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to break the peace of our said lord the king, and to interrupt and disturb the justices and commissioners of our said lord the king above-named, and others their fellows aforesaid, in the execution of their said office; and to prevent and hinder the due and peaceable holding of the same session, did, together with divers other riotous and ill-disposed persons, whose names are to the said attorney-general as yet unknown, in open court at the same session so then and there holden, and at which the said trial was so had as aforesaid, to wit, at M. aforesaid, in the presence of the justices and commissioners of our said lord the king above-named, and others their fellows as aforesaid, and before any order or direction had been made or given by the same justices and commissioners above-named, and others their fellows aforesaid, or any or either of them, for the discharge of the said A. O'C. from the custody of the said sheriff, and before the said A. O. C. was discharged from the custody of the said sheriff, to wit, on, &c. at, &c. with force and arms made, and did cause to be made, a very great riot, rout, tumult, and disturbance, and with force and arms, riotously, routously, and tumultuously attempt and endeavour to rescue the said A. O'C. from and out of the custody of the said sheriff, so that he the said A. O'C. might go at large wheresoever he would, and also aid and assist the said A. O'C. in an attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said sheriff; and the better to effect such rescue and escape, did then and there, at the same session so holden, and at which the said trial was so had as aforesaid, to wit, on, &c. at, &c. aforesaid, in the open court aforesaid, and in the presence aforesaid, with force and arms, and with sticks, staves, and fists, unlawfully, riotously, routously, and tumultuously make an assault in and upon one J. R. one E. F. and one T. A. in the peace of God and of our said lord the king, then and there being, and them the said J. R., E. F., and T. A. did then and there beat, bruise, wound, and ill-treat, and thereby, then and there, with force and arms, did unlawfully, riotously, routously, and tumultuously impede and obstruct the justices and commissioners of our said lord the king above-named, and others their fellows aforesaid, in the due and lawful holding of the same session, and the execution

of their office for a long space of time, to wit, the space of one hour; to the damage of the said J. R., E. F., and T. A., to the great contempt, disturbance, and interruption of the justices and commissioners above-named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said lord the king there being, in contempt, &c. to the evil example, &c. and against the peace, &c. And the said attorney-general of our said lord the king, for our said lord the king, further giveth the court here to understand and be informed, that the said S. earl of T., R. F., T. G. B., D. O'B. and T. T. well knowing all the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to rescue, and cause to be rescued, the said A. O'C., so being in the custody of the said sheriff as aforesaid, from the custody of the said sheriff; so that he the said A. O'C. might go at large whithersoever he would, did afterwards, to wit, at the same session so then and there holden, and at which the said trial was so had as aforesaid, and before any order or direction had been made or given by the justices and commissioners of our said lord the king above-named, and others their fellows aforesaid, or any or either of them, for the discharge of the said A. O'C. from the custody of the said sheriff, and also before the said A. O'C. was discharged from the custody of the said sheriff, to wit, on the, &c. aforesaid, at, &c. aforesaid, with force and arms, aid and assist the said A. O'C. in a certain other attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said sheriff; and the better to effect such rescue and escape as last aforesaid, did then and there, with force and arms, and with sticks, staves, and fists, unlawfully make a certain other assault in and upon the said T. A. in the peace of God, and of our said lord the king then and there being; and in the aid of the said sheriff then and there also being, and him the said T. A. did then and there again beat, bruise, wound, and ill-treat, to the great damage of the said T. A. to the great contempt, disturbance, and interruption of the justices and commissioners above-named, and others their fellows aforesaid, in contempt, &c. to the evil example, &c. and against the peace, &c. And the said attorney-general for our said lord the king, further giveth the court here to understand and be informed, that at the said session so holden, and at which the said trial was so had as aforesaid, to wit, at, &c. aforesaid, the said S. earl of T., R. F., T. G. B., D. O'B., and

Second count.

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Third count.

T. T. unlawfully and maliciously devising and intending to break the peace of our said lord the king, and to interrupt and disturb the justices and commissioners of our said lord the king above-named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session, did, together with divers other ill-disposed persons whose names are to the said attorney-general as yet unknown, at M. aforesaid, in the open court aforesaid, and in the presence of the justices and commissioners above-named, and others their fellows aforesaid, to wit, on, &c. aforesaid, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together, to break the peace of our said lord the king, and to interrupt, disturb, and obstruct the justices and commissioners above-named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session, and being so assembled and gathered together, did then and there, with force and arms, at the said session so then and there holden, and at which the said trial was so had as aforesaid, in the open court aforesaid, in the presence aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously, make and raise, and cause and procure to be made and raised, another very great noise, tumult, riot, and disturbance, and thereby for a long space of time, to wit, for the space of half an hour, interrupt, disturb, and obstruct the justices and commissioners above named, and others, their fellows aforesaid, in the lawful and peaceable holding of the said session, and in and upon the said J. R., E. F. and T. A. in the peace of God, and of our said lord the king, then and there being, with force and arms, did then and there make another assault, and them the said J. R., E. F., and T. A. did again beat, bruise, wound and greatly ill-treat, to the great damage of the said J. R., E. F., and T. A. to the great hindrance of public justice, to the manifest disturbance and violation of the peace of our said lord the king, to the great hindrance, obstruction, and contempt of the justices and commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said lord the king, there being, in contempt, &c. to the evil example, &c. and against the peace, &c. And the said attorney-general of our said lord the king, for our said lord the king, further giveth the court here to understand and be informed, that a certain other special session of oyer and terminer and gaol delivery, holden by adjournment in and for the

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Fourth count.

county of K., at, &c. aforesaid, on, &c. aforesaid, before Sir F. B., baronet, one of the justices of our said lord the king, of his court of Common Pleas; John H. esquire, one other of the justices of our said lord the king, of his court of Common Pleas; Sir S. L., knight, one of the justices of our said lord the king, assigned to hold pleas before the king himself; S. S. esquire, one of the serjeants of our said lord the king, learned in the law, and others their fellows, justices and commissioners of our said lord the king, by our said lord the king, duly assigned and constituted to hold the same session, the said S., Earl of T., R. F., T. G. B., D. O'B., and T. T. unlawfully and maliciously devising and intending to break the peace of our said lord the king, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, did, together with divers other ill-disposed persons whose names are to the said attorney-general as yet unknown, in open court, at and during the continuance of the said last-mentioned session, and in the presence of the justices and commissioners last above named, and others their fellows aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully, riotously, routously and tumultuously, assemble and gather themselves together to break the peace of our said lord the king, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, and being so assembled and gathered together, did then and there, with force and arms, at the said last-mentioned session in the open court last aforesaid, and in the presence last aforesaid, unlawfully, riotously, routously and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot and disturbance, and thereby for a long space of time, to wit, the space of half an hour, interrupt, disturb, and obstruct the justices and commissioners last above named, and others their fellows, last aforesaid, in the lawful and peaceable holding of the said last-mentioned session, to the great hindrance of public justice, to the contempt and interruption of the justices and commissioners last above named, and others their fellows aforesaid, to the manifest disturbance and violation of the peace of our said lord the king, to the great terror of all the liege and peaceable subjects of our said lord the king, there being, in contempt of our said lord the king, and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further giveth the

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Fifth count, for a common riot.

court here to understand and be informed, that the said S. Earl of T., R. F., T. G. B., D. O'B. and T. T. unlawfully and maliciously devising and intending to break the peace of our said lord the king, did, together with divers other ill-disposed persons, whose names are to the said attorney-general as yet unknown, on, &c. aforesaid, at, &c. aforesaid, unlawfully, riotously, routously and tumultuously, assemble and gather themselves together to break the peace of our said lord the king, and being so assembled and gathered together, did then and there, with force and arms, unlawfully, riotously, routously and tumultuously, make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot and disturbance, to the manifest disturbance, &c. [*as in the fourth count, and conclude information as ante, 6.*]

For a riot and forcible intrusion where commissioners of taxes were sitting, and assailing one of them.

That A. B. late of, &c. and C. D. late of, &c. together with divers other wicked and evil-disposed persons, to the jurors aforesaid as yet unknown, being rioters, routers, disturbers and affrayers, on, &c. with force and arms, at, &c. unlawfully, riotously and routously did assemble, &c. and then and there unlawfully, &c. did break and enter the dwelling-house of one G. H. there situate, in which said dwelling-house the commissioners of the land and assessed taxes were then and there sitting, for the hearing and determining of appeals against the said taxes, within the hundred of, &c. in the county of, &c. and in due execution of their office and duty as such commissioners, and then and there unlawfully, &c. staid and continued in the said dwelling-house, making a great noise, tumult, &c. therein for a long space of time, to wit, &c. then next following, and thereby for and during all that time, there greatly disturbed and disquieted the said commissioners, and obstructed and hindered them in the due execution of their office and duty as such commissioners, and then and there unlawfully, &c. intruded themselves, and came within a certain room in the said dwelling-house, wherein the said commissioners then were, and made a great noise, tumult, &c. therein, and then and there unlawfully, &c. did make an assault on, &c. one of the said commissioners, in the peace of God, and our said lord the king, then and there being in the said room, and him, the said, &c. then and there unlawfully did beat, bruise, and ill-treat, so that his life was thereby then and there greatly despaired of, and other wrongs, then and there unlawfully, &c. did, in contempt, &c. to the evil, &c. and against the peace, &c.

[Second count, stating breaking open the door and assaulting another commissioner. Third count, for the forcible entry and riot. Fourth count, for the assault upon the two commissioners.]

FOR RETURNING, &c. FROM TRANSPORTATION.

That at the general session of the delivery of the gaol of our lord the king, of Newgate, holden for the county of Middlesex, at Justice Hall, in the Old Bailey, in the suburbs of the city of London, on, &c. before, &c. and others their fel-

For felony, in returning from transportation, on 16 Geo. 2. c. 15. s. 1. (a).

(a) See other precedents, Cro. C. A. 411. Cro. C. C. 8th edit. 464, 5. Stark. 618 to 623. *The offence.* See ante, vol. i. Index, 'Transportation.' The 16 Geo. 2. c. 15. s. 1, is virtually repealed by the 5 Geo. 4. c. 84, which revives and consolidates into one act, the laws relative to the transportation of offenders, and by this statute, section 22, it is enacted, that if any offender, sentenced or ordered to be transported or banished, or having agreed to transport or banish himself, either for life or any number of years, shall be afterwards found at large without lawful excuse, before the expiration of the term, he shall suffer death without benefit of clergy. This act does not extend to persons banished, under the 60 Geo. 3, and 1 Geo. 4. c. 8, relating to blasphemous and seditious libels, sec. 25. 5 Geo. 4. c. 84. *Indictment.* The venue may be laid either in the county where the party was apprehended, or that in which he was ordered to be transported, 5 Geo. 4. c. 84. s. 22. 6 Geo. 1. c. 23. s. 7. The 23d section of the 5 Geo. 4. c. 84, points out the form of the indictment, and enacts, that it shall be suffi-

cient to charge or allege in the indictment, the order made for the transportation or banishment of the offender, without charging or alleging any indictment, trial, conviction, or judgment, or sentence, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offenders; and see Cro. C. C. 8th ed. 466, in notes. *Evidence.* The certificate of the conviction and order, &c. by the clerk of assize, will be sufficient proof that the prisoner has been convicted, and ordered for transportation, 5 Geo. 4. c. 84. s. 24. 6 Geo. 1. c. 23. s. 7. *Defence.* If the prisoner can show such circumstances of poverty or sickness, which amount to an absolute impossibility to transport himself or leave the kingdom, he will be entitled to an acquittal, 1 Leach, 396. *Judgment.* Death without clergy. But if the prisoner was convicted of a single felony, and sentenced to transportation, after which he is pardoned under the sign manual, on condition of his giving security to transport himself, without saying absolutely to transport himself, and he has complied with the first condition, in its literal

lows, justices of our said lord the king, assigned to deliver the gaol of our said lord the king, of Newgate, of the prisoners therein being; E. L. late of, &c. according to due course of law was tried, for that, &c. [*here set out the former indictment*], and thereupon, by a certain jury of the country, between our said lord the king, and the said E. L. in that behalf, then and there, to wit, on, &c. aforesaid, at and in the court of the said sessions, so holden as aforesaid, duly taken, he the said E. L. was duly convicted of the said felony, upon the indictment aforesaid (a), and thereupon the aforesaid E. L. by the above-named justices of our said lord the king, assigned to deliver his gaol of Newgate aforesaid, of the prisoners therein being, was ordered to be "transported beyond the seas for and during the term of seven years," as by the record thereof more fully appears; and that the said E. L. afterwards, to wit, on, &c. with force and arms, feloniously, and without any lawful cause whatsoever, was at large, within this kingdom of Great Britain, to wit, at, &c. before the expiration of the term of seven years, for which he the said E. L. was so ordered to be transported as aforesaid, against the form of the statute, &c. and against the peace, &c. [*Add a count according to 5 Geo. 4. c. 84. s. 23, merely stating the order.*]

Against a felon, under sentence of transportation, for being at large before the expiration of the term after a conviction at the Quarter Sessions, on 16 Geo. 2. c. 15. s. 1 (b).

[*Commencement as ante, 2.*] That at the general quarter sessions of the peace of our said lord the king, holden at Lancaster, in and for the county palatine of Lancaster, on, &c. before R. F. and G. H. esquires, and others their companions, then and there present, justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for

sense, he cannot be capitally convicted, but must be remanded to his original sentence, 1 Leach, 71. 2 Bla. Rep. 797. And it seems, that even if both conditions are expressed, and the first only complied with, the prisoner can only be remitted to his original sentence, 1 Leach, 390. Where the party was convicted of a capital crime, and being pardoned, on condition of transportation, is found at large before the expiration of the term prescribed, he need not be indicted, but will be played

in the same situation in which he was found by that pardon, the terms of which he has broken, 1 Leach, 223. *Rewards.* Any person prosecuting to conviction an offender returning illegally from transportation, will receive 20*l.* by the 5 Geo. 4. c. 84. s. 22. 16 Geo. 2. c. 15. s. 2.

(a) By the 5 Geo. 4. c. 84. s. 23, no more than the order for transportation need be stated, see ante, 215, note.

(b) On this indictment the prisoner was convicted, Stark. 2d edit. 618, note (i).

the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the same county perpetrated, that same general quarter session of the peace of our said lord the king, was adjourned by the aforesaid justices of our said lord the king in that court being, until, &c. to wit, at, &c. in and for the same county, to do further, as the court there should consider. And on the said, &c. at the same general quarter session of the peace of our said lord the king, holden by the said adjournment at Preston aforesaid, in and for the said county, before J. P. &c. and others their companions, then and there present, justices of our said lord the king, &c. that same general quarter session of the peace of our said lord the king, holden by adjournment as aforesaid, was further adjourned by the same last-mentioned justices of our said lord the king, in that court being, until, &c. to be holden at W. in and for the said county, to do further as the court there should consider, and on the said, &c. the same sessions of the peace of our said lord the king, was holden by the adjournment last aforesaid, at W. aforesaid, in and for the said county, before R. G. &c. esquires, and other their companions, then and there present, justices, &c. at which said sessions of the peace of our said lord the king, holden by the said last-mentioned adjournment at W. aforesaid, in and for the said county, on the said, &c. upon the oaths of A. B. &c. [*the names of the grand jurors*], gentlemen, good and lawful men of the county of L. aforesaid, then and there sworn and charged to inquire for our said lord the king, and for the body of the said county, it was presented, that one W. W. late of, &c. on, &c. [*here set out the indictment for simple larceny*], whereupon the sheriff of the said county was commanded to apprehend and take the body of the said W. W. and thereupon at the same general quarter session of the peace, holden by the said last-mentioned adjournment, at W. aforesaid, in the county aforesaid, the said, &c. before the said justices of our said lord the king, last above-named, came the said W. W. in the custody of the governor of the house of correction, in P. aforesaid, (into whose custody, in the same prison, he the said W. W. had been before committed), and having had hearing of the indictment aforesaid, was instantly asked to speak to the said court, how he would acquit himself of the premises aforesaid, in the indictment aforesaid, so charged and imposed on him, who said that he was guilty of the felony aforesaid, in the indictment aforesaid, on him so charged and

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imposed, as by the form of the said indictment was charged and supposed to be, and upon that it was required by the court there of the said W. W., if he had any thing to say for himself why the court there ought not to proceed to judgment concerning him, upon the said indictment, who said nothing, besides what at first he had said, whereupon all and singular the premises being seen and understood by the court there, it was considered, and adjudged by the court there, that the said W. W. should be sent and transported to some parts beyond the seas, for the space of seven years, pursuant to the statute in that case made and provided, as by the record thereof more fully appears. And the jurors aforesaid, now here sworn, do further present that the said W. W. afterwards, to wit, on, &c. with force and arms, feloniously, and without any lawful excuse, was at large within this kingdom of Great Britain, to wit, at, &c. before the expiration of the said space of seven years, for which he the said W. W. was so adjudged to be transported as aforesaid, against the form of the statute, &c. and against the peace, &c.

For being at large after sentence of death, respite, and order of transportation, on statute 16 G.2. c. 15 (a).

[*As in the precedent, ante, 215, 16, until the statement of conviction, and then proceed as follows.*] And that in, and at the same court of session and gaol delivery, he the said J. K. received judgment to die, according to due form of law; nevertheless, execution of the said judgment for certain reasons thereunto moving the said justices, was respited until his majesty's pleasure, with respect thereto, should be known, and that in pursuance of his majesty's pleasure, signified under the hand of one of his principal secretaries of state, the said J. K. was afterwards, to wit, at the court of session and gaol delivery of our said lord the king, holden for the said county of Chester, at the castle of Chester, aforesaid, in the same county, upon, &c. before, &c. ordered by the same justices to be transported, as soon as conveniently might be, to some of his majesty's colonies or plantations in America, in parts beyond the seas, for the term of fourteen years, according to the form of the statute in such case made and provided, as by the record thereof more fully appears. And the jurors, &c. [*conclude as in the precedent, ante, 216.*]

(a) See precedent, Cro. C.C. 8th edit. 464, and the notes, ante, 215, 16.

TAKING MONEY TO RETURN STOLEN GOODS.

That on, &c. at, &c. one gold watch, with a gold chain of the value of seventeen pounds, of the goods and chattels of one J. L. (by a certain felon, to the jurors aforesaid as yet unknown,) from the person of him the said J. L. privily, secretly, and without the knowledge of him the said J. L. (b) with force and arms, was then and there feloniously stolen, taken, and carried away. And the jurors aforesaid, upon their oath aforesaid, do further present, that R. D. late of, &c. labourer, afterwards, to wit, on, &c. at, &c. aforesaid, (notwithstanding he the said R. D. did not then and there apprehend and cause to be apprehended the said felon who stole the said watch and chain as aforesaid, and cause the said felon to be brought to his trial for the same,

For felony, in receiving money to help a person to goods stolen privily from the person, on 4 Geo. 1. c. 11. s. 4 (a).

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(a) See other precedents, Cro. C. C. 8th ed. 460. 1 Leach, 18. Stark. 2d edit. 486. *Offence*. See 4 Bl. Com. 132. It is enacted by 4 Geo. 1. c. 11. s. 4. "that wherever any person taketh money or reward, directly or indirectly, under pretence or upon account of helping any person or persons to any stolen goods or chattels, every such person so taking money or reward as aforesaid (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause such felon to be brought to his trial, and give evidence against him) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed, in stealing such goods, and in such and the same manner as if such offender had himself stole such goods and chattels, in the manner and with such circumstances as the same were stolen. Under this act it seems to have been doubted whether the offender can be punished in case the

original felon has by death or other means escaped conviction, 1 Leach, 15; but such a construction appears wholly contrary to the intent of the statute, 2 East P. C. 770, 1. And the party may be convicted on the evidence of the principal felon, 1 Leach, 18. 2 East P. C. 770. 1 Leach, 418. *Indictment*. It is proper to aver that the defendant had not apprehended, or caused to be apprehended the principal, &c. as that reservation is contained in the enacting clause, and constitutes part of the description of the offence, 2 East P. C. 771. The original felony must be described according to the facts of each case, see the precedents above referred to. *Rewards*. By 6 Geo. 1. c. 23. s. 9. a reward of £40 is conferred on a party apprehending and prosecuting to conviction one of this description of offenders, Cro. C. C. 8th edit. 10.

(b) The description of the former offence varies according to the facts, see another form, Stark. 2d ed. 486.

and give evidence against him,) under pretence and upon account of helping the said J. L. to his said watch and chain, so feloniously stolen as aforesaid, did then and there, with force and arms, wilfully, unlawfully, and feloniously take money of and from the said J. L. that is to say, the sum of £7. of the lawful money of Great Britain, and did then and there deliver the same watch and chain, so as aforesaid feloniously stolen, to him the said J. L. against the form of the statute, &c. to the evil example, &c. and against the peace, &c.

The like in another form (a).

[Commencement as ante, 2.] That C. K. a repeating watch, the goods of S. P. privately, from the person of W. L. feloniously did steal, take, and carry away, and that afterwards, the said J. D. did feloniously receive and have eight guineas, as a reward for helping one N. D. to the said watch, he the said J. D. not having apprehended or caused to be apprehended the said C. K. &c. against the form of the statute, &c. and against the peace, &c.

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FOR COMPOUNDING FELONY.

For compounding a felony (b).

That on, &c. at, &c. one W. D. in his own proper person, came before J. P. esquire, then and yet being one of the justices of our said lord the king, assigned, &c. [as ante, 182,] and then and there upon his oath did charge and accuse one M.

(a) See 1 Leach, 18. See notes, ante, 218, note (a), 219 note (b).

(b) See other precedents, Cro. C. C. 8th edit. 117. 7th edit. 252. 4 Wentw. 327. Stark. 2d ed. 705. The form in the last edition of the Cro. C. C. is much more concise than the form in the prior editions, and the other precedents above referred to. *Offence.* The offence of compounding felony by the party immediately aggrieved receiving again goods stolen in case of robbery, or in that or any other case taking a reward not to prosecute, has always been

highly penal. It was formerly holden to constitute the party thus offending an accessory to the original crime, 4 Bla. Com. 134. At the present day, it is a high misprision and obstruction of public justice, punishable by fine and imprisonment, 1 Hale, 546. 619. 2 Hale, 400. But the mere retaking of goods stolen when found by the lawful owner is no offence, unless some understanding exist that the offender shall not be indicted, 1 Hale, 546. See, on this subject, ante, vol. i. 4, 5, and cases there cited.

the wife of P. J. with feloniously stealing, taking, and carrying away one silver spoon and two silk handkerchiefs, of the goods and chattels of the said W. D. upon which the said J. P. then and there issued out his warrant, under his hand and seal, made in due form of law, for the apprehending and taking the said M. to answer and be examined of and concerning the felony aforesaid, on her as aforesaid charged, and that afterwards, to wit, on, &c. the said M. &c. aforesaid, for the said felony, and by virtue of the said warrant, was taken and arrested, and then and there was brought before the said J. P. the justice aforesaid, and then and there before the same justice, of and concerning the same felony, was examined, upon which the said J. P. the justice aforesaid, did then and there make a certain warrant under his hand and seal in due form of law, directed to the keeper of Newgate or his deputy, thereby commanding the aforesaid keeper, or his deputy, to receive into his custody the body of the said M. J. so charged with such felony as aforesaid, and her in custody safely to keep, until she should be discharged by due course of law. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. D. late of, &c. and J. D. late of, &c. well knowing the premises, and each of them well knowing the same, but contriving and intending unlawfully and unjustly to pervert the due course of law in this behalf, and to cause and procure the said M. J. for the felony aforesaid, to escape with impunity afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully, and for wicked gain sake did take upon themselves to compound the said felony on the behalf of the said M. J. and then and there did exact, receive, and have of the said P. J. the husband of the said M. J. twenty-six shillings in monies numbered, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said M. J. for the felony aforesaid, to the great hindrance of justice, to the evil example, &c. in contempt, &c. and against the peace, &c.

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That heretofore, to wit, on, &c. at, &c. one A. B. with force and arms, feloniously did steal, take, and carry away one lamp, of the value of twenty shillings, of the goods and chattels of one C. D. late of, &c. against the peace of our lord the king, his crown and dignity. And that the said C. D. well knowing the premises, and the said felony to have been by the said A. B. so as aforesaid done and committed, but contriving and intending unlawfully and unjustly to pervert the due course of law,

The like in a more modern form.

in this behalf, and to cause and procure the said A. B. for the felony aforesaid, to escape with impunity, afterwards, to wit, on, &c. with force and arms, at, &c. unlawfully, and for wicked gain's sake, did compound the said felony with the said A. B. and did then and there exact, receive, and have, of the said A. B. the sum of eighteen shillings, in monies numbered, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said A. B. for the said felony; and that the said C. D. on, &c. last aforesaid, at, &c. aforesaid, did thereupon desist, and from that time hitherto hath desisted, from all further prosecution of the said A. B. for the said felony; to the great hindrance of justice, in contempt, &c. and against the peace, &c. [*Add a count omitting the statement as to the party having desisted from prosecuting.*]

Against third persons for prevailing on a woman, on whom rapes had been committed, to compound the same with the offenders, after the offenders had been imprisoned, and were about to be prosecuted (a).

That before the day of taking this inquisition, to wit, on, &c. [*Indictment states several rapes on W. W. as post, indictments for rapes, and 4 Went. 327, and then proceed as follows,*] and thereupon the said W. W. afterwards, to wit, on, &c. at, &c. made complaint on oath to R. B. esquire, then and still being one of the justices, &c. [*as ante, 182,*] touching and concerning the several felonies and rapes aforesaid, and thereupon the said R. B. so being such justice as aforesaid, did then and there make and grant his certain warrant, under his hand and seal, for the apprehending, taking, and bringing the said C. B. and B. B. before him the said justice, to be dealt with according to law, touching and concerning the rapes and felonies aforesaid. And the jurors, &c. do further present, [*state the arrest, examination, and commitment of C. B. as in the precedent, ante, 220.*] And the jurors, &c. do further present, that the said W. W. intended, and then was about to prosecute, prefer, and offer to the grand jury, in and for the said town and county of S., at the then next quarter sessions of the peace of our said lord the king, in and for the said town and county, a certain bill of indictment against the said C. B. for the felony and rape so committed by the said C. B. as aforesaid. And the jurors, &c. do further present, that W. R. late of, &c. and W. S. late of, &c. well knowing the premises, and each of them well knowing the premises, but contriving and intending unlawfully and unjustly to pervert the due course of law in this behalf, and to cause and procure the

(a) See precedent, 4 Wentw. 327, and notes, ante, 220, note (b).

said C. B. for the felony and rape so by him committed as aforesaid, to escape with impunity and without prosecution for the same, they the said W. R. and W. S. afterwards, to wit, on, &c. at, &c. unlawfully and wickedly did take upon themselves to cause and procure the felony and rape last aforesaid, on the behalf of the said C. B. to be compounded, and did then and there unlawfully and wickedly persuade and procure the said W. W. to accept and take, and the said W. W. did then and there, by reason of such persuasion and procurement of the said W. W. and W. S. receive, accept, and take certain money, that is to say, divers pieces of gold coin, to wit, two pieces of gold coin called guineas, the same being then and there of the value of two pounds, two shillings, of lawful, &c. that is to say, of and from the said W. R. as and for a reward for compounding the felony and rape aforesaid, to wit, the felony and rape so committed by the said C. B. and for her desisting from the further prosecution of the said C. B. for the rape and felony aforesaid, and that the said W. W. did, in consequence of such persuasion and procurement of the said W. R. and W. S. and of the premises aforesaid, then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, compound the felony and rape aforesaid, and hath from thence hitherto desisted from the further prosecution of the said C. B. for the same, to wit, at, &c. aforesaid, to the great hindrance of public justice, to the evil example, &c. in contempt, &c. and against the peace, &c. And the jurors, &c. &c. [*Add a second count, stating the rape to have been committed by C. B. singly, and then a third count, not charging the rapes or rape to have been actually committed, but reciting generally by way of inducement, that W. W. made her complaint against the two men for rapes, as in the precedent, ante, 220, the granting the warrant, apprehension of C. B. and his commitment to prison, in consequence of another warrant, as in the foregoing precedent, and then the general conclusion following:*] And the jurors, &c. do further present, that the said W. R. and W. S. well knowing the premises, and each of them well knowing the same, but contriving and intending unlawfully and unjustly to pervert the due course of law in this behalf, and to cause and procure the said C. B. for the felony and rape last aforesaid, to escape with impunity, afterwards, to wit, on, &c. in, &c. at, &c. unlawfully and wickedly did take upon themselves to procure and persuade the said W. W. on the behalf of the said C. B. to compound the said felony and rape last mentioned, and did then and there

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Second and third counts.

unlawfully and wickedly procure the said W. W. to receive, accept, and take, and the said W. W. did then and there, by reason of such persuasion and procurement of the said W. R. and W. S. receive, accept, and take certain money, that is to say, divers pieces of gold coin, to wit, two pieces of gold coin called guineas, the same being then and there of the value of two pounds, two shillings, of lawful, &c. that is to say, of and from the said W. R. as a reward for compounding the rape and felony committed by the said C. B. as last aforesaid, and desisting from all further prosecution against the said C. B. for the felony and rape last aforesaid, at, &c. aforesaid. [*Conclusion as in foregoing count.*]

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FOR COMPOUNDING A PENAL ACTION.

Information in K. B. by master of Crown office, for compounding a *qui tam* action commenced in that court on the 31 Eliz. c. 6. s. 8, in the name of another, for corruptly resigning a benefice (a).

[*Commencement as ante*, 7.] That G. B., clerk, heretofore, to wit, on, &c. was incumbent of a certain benefice, with the cure of souls, that is to say, of the church of G. in the county of S., and being so incumbent thereof, he the said G. B. afterwards, to wit, on the same day and year aforesaid, resigned the said benefice, to wit, at Westminster, in the said county of Middlesex. And the said coroner and attorney of our said present lord the king, for our said present lord the king, giveth

(a) See other precedents, 4 Wentw. 319 to 327, 329. Cro. C. C. 8th edit. 117 to 120. 7th edit. 254. 6 Wentw. 399. Cro. C. A. 70. Stark. 2d edit. 770. And see an information exhibited by a common informer for compounding an offence against the game laws, after an attachment had issued out of B. R. upon an information exhibited in that court, Cro. C. A. 70. *The offence.* By 18 Eliz. c. 5. s. 3, it is enacted, "that no such informer or plaintiff (*i. e.* common informer on a penal statute) shall compound or agree with the defendant, but after answer made in court; nor after an-

swer, but by the order or consent of the court. The punishment prescribed in the 4th sect. is two hours' exposure in the pillory in the next adjoining market town, the forfeiture of ten pounds, half to the party grieved, and half to his majesty, and a disability of suing in any action on a penal statute. This act was made perpetual by 27 Eliz. c. 10. But by 56 G. 3. c. 138, the part of the punishment prescribed by 18 Eliz. s. 4, as to the pillory, is abolished. The statute of Eliz. does not apply to offences cognizable only before magistrates, and an indictment for compounding such an offence

the court here further to understand and be informed, that afterwards, to wit, in the term of St. Hilary, in, &c. a certain suit by bill, without the writ of the said late king was commenced and prosecuted in the name of one A. M. as suing in that behalf, as well for our said lord the king as himself, against the said G. B. in the court of our said lord the king, before the king himself, (the said court then being at Westminster aforesaid, in the county of Middlesex,) in a plea of debt for two thousand pounds, wherein the said G. B. was declared against, that [*here set out the declaration.*] And afterwards, that is to say, on, &c. in the court of the said late lord the king before the king himself, (the said court being then at Westminster aforesaid,) came the said G. B. by C. B. his attorney; and the said G. B. defended the wrong and injury, when, &c. and said, that he did not owe to the said lord the late king, and the said A. who sued in that behalf, as well for the said lord the late king as for himself, the said two thousand pounds, or any part thereof, in manner and form as the said A. who sued as aforesaid, complained against him, and of that he put himself on the country, as by the record and proceedings thereof now remaining in the court of our said lord the king, before the king himself, at Westminster aforesaid, fully appears (a). [And the said coroner and attorney of our said lord

was holden bad in arrest of judgment, 1 B. & A. 282; and this statute extends only to common informers, and not to cases where the penalty is given to the party grieved, 1 Salk. 30, and see 5 & 6 sections of act, 2 Hawk. P. C. 279. The threatening, by letter or otherwise, to put in motion a prosecution by a public officer, to recover penalties under a statute, is not in itself an indictable offence at common law, for it is a threat which a firm and prudent man may well be expected to resist, 6 East, 6; but yet it seems, that it might be considered as an attempt to commit a statutable misdemeanor. In such case, the offence *intended* should be shewn to be within the statute,

and laid to be against the form of the statute, *id.*; so it seems that the offence might have been laid as an attempt to defraud the revenue by stifling a public prosecution for the sake of private gain, *id.* Stark. 770. A notice of action required by a penal statute, was held to be no commencement of the suit, so as to subject the plaintiff or his agent to an attachment for attempting to compound an offence previous to the suing out of the writ, 2 Bla. Rep. 781; as to the proceeding, and manner of obtaining leave to compound, &c., see Tidd's Prac. 8th edit. 604.

(a) The allegation between the brackets is in Cro. C. C. 7th edit. 258, but not in Cro. C. C. 8th edit. 119.

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the now king, for our said lord the king, gives the court here further to understand and be informed, that the said suit so commenced and prosecuted in the name of the said A. M., as aforesaid, was really and in fact commenced and prosecuted by J. H. late of Westminster, in the county of Middlesex, broker, and under his direction, and that the name of the said A. M. was made use of in the said suit in trust for, and for the benefit of the said J. H., to wit, at Westminster aforesaid, in the said county of Middlesex,] and the said coroner and attorney of our said lord the king, for our said lord the king, gives the court here further to understand and be informed, that the said J. H. late of Westminster aforesaid, in the said county of Middlesex, broker, not regarding the statute in such case made and provided, nor fearing the pains and penalties therein contained, afterwards, and whilst the said suit was depending in the said court of the said lord the king, before the king himself, that is to say, on and after answer made in court by the said G. B. unto the said suit, in that behalf prosecuted, that is to say, on, &c. at, &c. aforesaid, he the said J. H. did unlawfully compound and agree with the said G. B. so surmised to have offended against the penal statute above particularly mentioned, for the said offence, pretended to have been committed by him in manner aforesaid, without the order or consent of the said court of our lord the king, before the king himself, in which said court the said suit was then depending, by then and there agreeing to accept, and accepting from the said G. B. a promissory note of him the said G. B. for the payment of a large sum of money, to wit, the sum of one hundred pounds, to him the said J. H. or order, at a certain time then to come, and long since past, as and for a composition for the said offence, pretended to have been committed by the said G. B. as aforesaid, in contempt, &c. to the great obstruction of justice, to the evil and pernicious example, &c. against the peace, &c. and also against the form of the statute, &c. And the said coroner and attorney, &c. that the said J. H. heretofore, to wit, in the term of St. Hilary, in the twentieth year, &c. in the name of one A. M. as prosecuting in that behalf, as well for the said late king as for himself, by bill, without the writ of the said late king, impleaded, and caused to be impleaded, one G. B. in the court of the said late king, before the said late king himself, (the said court being then at Westminster aforesaid, in the said county of Middlesex), in a plea of debt for two thousand pounds, as forfeited by the

Second count,
stating only substance of the original proceeding.

said G. B. for an offence pretended to have been committed by him, against a certain penal statute made in the parliament of the lady Elizabeth, late queen of England, at a session thereof holden at Westminster, in the thirty-first year of her reign, intituled, "An act against abuses in election of scholars and presentation to benefices," by reason of a pretended corrupt resignation of a certain benefice with cure of souls, to wit, the church of G. in the county of S., pretended to have been made by the said G. B. alleged to have been the incumbent of the said benefice, with the cure of souls, and also by reason of his having corruptly taken, for and in respect of the said pretended resignation, a large sum of money, to wit, one thousand pounds, as pretended. And the said coroner and attorney of our said present lord the king, for our said present lord the king, gives the court here further to understand and be informed, that afterwards, to wit, in Easter Term, in the twenty-ninth year aforesaid, in the said court of the said lord the king, before the king himself, (the said court then also being at Westminster aforesaid, in the said county of Middlesex), the said G. B. made answer unto the said suit. And this said coroner and attorney of our said lord the king, giveth the court here further to understand and be informed, that afterwards, and whilst the said last-mentioned suit was depending in the court of the said lord the king, before the king himself, and after answer made in court by the said G. B. unto the said suit in that behalf prosecuted, that is to say, on, &c. at, &c. aforesaid, he the said J. H. did unlawfully compound and agree with the said G. B. so surmised to have offended against the said penal statute above particularly mentioned, for the said offence pretended to have been committed by him as last aforesaid, without the order or consent of the said court of our said lord the king, before the king himself, in which said court the said suit was then depending, by then and there agreeing to accept, and accepting from the said G. B. a promissory note of him the said G. B. for the payment of a large sum of money, to wit, the sum of £100. to him the said J. H. or order, at a certain time then to come, and long since past, as and for a composition for the said offence, pretended to have been committed by the said G. B. as last aforesaid, in contempt, &c. [*as before.*]

[Third count, same as the second, except omitting the receipt of money for resigning, &c. and the note for compounding. Fourth count, similar to the second, except stating an intention to obstruct the course of justice. Fifth count, omitting former

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defendant's answer, and all that relates to receiving the money, &c.]

For compounding a qui tam action without leave of court, upon the 5th Eliz. c. 5, for selling Lisbon wine contrary to the statute (a).

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That heretofore, and after the 5th day of July, which was A. D. 1757, to wit, on, &c. at, &c. one J. R. then and there, not being a person, &c. [*set out original offence, as in a declaration.*] And the jurors, &c. do further present, that after the committing of the said offence, and before the said penalty, or any part thereof, had been recovered, and whilst the same was due, in arrear, and unpaid, to wit, on, &c. at, &c. W. K. late of, &c. as well for our said lord the king as for himself, the said W. K. in that behalf, sued and prosecuted out of the court of the said lord the king, before the king himself, at Westminster, in the said county of Middlesex, a certain precept of our said lord the king, called a bill of Middlesex, against the said J. R., by which said precept the sheriff of Middlesex was commanded [*here set out the bill of Middlesex,*] which said precept was so sued and prosecuted, with intent that the said J. R. might be, by virtue thereof, compelled to appear at the return of the said precept, in the said court of our said lord the king, before the king himself, at Westminster aforesaid, at the suit of the said W. K. who sues as aforesaid, and to file common bail in the said court, at the suit of the said W. K. who sued as aforesaid, with intent, that upon appearance and filing common bail as aforesaid, the said W. K. might, as well for our said lord the king, as for himself, exhibit his bill against the said J. R., in the said court, in a plea of debt for the recovery of the said £100. forfeited for the said offence. And the jurors, &c. do further present, that the said W. K. well knowing the premises, and not regarding the statute in that case made and provided, and not fearing the penalties therein contained, and after the suing out the said precept, and whilst the said suit, so prosecuted as aforesaid, was depending in the said court of our said lord the king, before the king himself, and before answer made in court thereto, and before any judgment was had, obtained, and given in the said suit, that is to say, on, &c. at, &c. he the said W. K. by colour and pretence of the said precept and process so sued and prosecuted out of the court of, &c. and of the said matter of offence, against the penal law in that case made and provided, unlawfully did take,

(a) See form and opinion, 4 Wentw. 323, and the note, ante, 223, n. (a).

accept, and receive, of and from the said J. R. the sum of £3. 13s. 6d. of lawful money of Great Britain, and the said W. K. did thereby then and there make composition with the said J. R. for the said offence so committed by the said J. R. against the statute in that case made and provided, and did wholly desist and abstain from any further prosecuting the said suit, which said compounding, so done as aforesaid, was then and there so done without the order or consent of the said court of our said lord the king, before the king himself, in which said court the said suit was then depending, and without the order or consent of any other of his majesty's courts at Westminster, and without any legal authority whatsoever, in contempt, &c. to the great hindrance and obstruction of public justice, to the evil example, &c. contrary to the true intent and meaning of the statute in that case made and provided, and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. K., having sued and prosecuted the said precept out of the said court of, &c. and not regarding, &c. nor fearing, &c. and whilst the said suit so prosecuted as aforesaid was depending in the said court, and before answer made in court thereto, and before any judgment was had, obtained, and given in the same suit, that is to say, on, &c. at, &c. he the said W. K. by colour and pretence of the said precept and process, so sued and prosecuted out of the said court, and of the said matter of offence against the penal law, in that case made and provided; unlawfully did take, accept, and receive, of and from the said J. R., the sum of £2. 12s. 6d. of lawful money of Great Britain, and the said W. K. thereby did then and there make composition with the said J. R. for the said offence so committed by the said J. R., against the statute in that case made and provided, and did wholly desist and abstain from any further prosecuting the said suit, which said compounding so done as aforesaid, was then and there so done without, &c. in which said court the said suit was, &c. and without the order or consent of any other of, &c. in contempt of, &c. and against the peace of, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, to wit, on, &c. the said W. K. as well for, &c. sued and prosecuted out of the court of, &c. a certain other precept of our said lord the king, called a bill of Middlesex, against the said J. R., by which said last-mentioned precept the sheriff of Middlesex was commanded to take the said J. R. and J. D. if they should be found in his

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Second count.

Third count.

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bailiwick, and that he should keep them safely, so that he might have their bodies before our said lord the king at Westminster, on, &c. next after, &c. to answer the said W. K., who sued as well for our, &c. in a plea of debt, and that he should then have there that precept, which said last-mentioned precept was so sued and prosecuted, with intent that the said J. R. might be by virtue thereof compelled to appear at the return of the said last-mentioned precept, in the said court of, &c. at Westminster aforesaid, at the suit of the said A. K., who sues as aforesaid, and to affile common bail in the same court, at the suit of the said W. K., who sues as aforesaid, and with intent that upon appearance and filing common bail as last aforesaid, the said W. K. might as well for our said lord the king as for himself, proceed in the said suit against the said J. R., according to the course and practice of the said court, for the recovery of a certain penalty and sum of £100, alleged to be forfeited by the said J. R. for a certain surmised offence, pretended to be committed by the said J. R. for selling wine by retail without being authorized and enabled so to do, in the manner in the statute in that case made and provided, contrary to the form of the statute in that case made and provided. And the jurors, &c. do further present, that the said W. K. well knowing the premises, and not regarding the statute in that case made and provided, nor fearing the penalties therein contained, afterwards, and after the suing out of the said last-mentioned process, and before the return thereof, that is to say, on, &c. at, &c. he the said W. K. by colour and pretence of the said last-mentioned process, and by surmise of the said last-mentioned supposed matter of offence against the penal law, in that case made and provided, unlawfully did take, accept, and receive, of and from the said J. R. the sum of £3. 13s. 6d. of like lawful money, and the said W. K. thereby did, then and there, make composition with the said J. R. for the said surmised offence, so pretended to be committed by the said J. R. against the penal law in that case made and provided, and did wholly desist and abstain from any further prosecution of and upon the said last-mentioned process, which said last-mentioned composition so done as aforesaid, was then and there so done without the order or consent of any of his majesty's courts at Westminster, and without any lawful authority whatsoever, in contempt of, &c. to the great hindrance, &c. and against the peace of, &c. And the jurors, &c. aforesaid do further present, that the said W. K. having sued and prosecuted the said

last-mentioned process out of the said court of, &c. and not regarding, &c. or fearing, &c. afterwards, and after suing out the said last-mentioned process, and before the return thereof, that is to say, on, &c. at, &c. in, &c. he the said W. K. by colour and pretence of the said last-mentioned process, and by surmise of the said last-mentioned supposed matter of offence against the penal law in that case made and provided, unlawfully did take, accept, and receive, of and from the said J. R. the sum of other £2. 13s. 6d., of like lawful money, and the said W. K. thereby did then and there make composition with the said J. R. for the said surmised, &c. &c. [*as in the last count, to the end.*] And the jurors aforesaid, upon their oath Fifth count. aforesaid, do further present, that the said W. K., having caused the said last-mentioned process to be issued against the said J. R., and not regarding, &c. nor fearing, &c. afterwards, that is to say, on, &c. at, &c. in, &c. did unlawfully, by colour and pretence of the said last-mentioned process, take, accept, and receive, of and from the said J. R. the sum of £3. 13s. 6d., of like lawful money, without the order or consent of, &c. in contempt of, &c. and against the peace of, &c. And the jurors aforesaid, upon, &c. do, &c. [*same as last count, only for two pounds twelve shillings and sixpence.*] [229]

That one A. B. heretofore, to wit, on, &c. prosecuted out of the court of our said lord the king, before the king himself, the same court then being at, &c. a certain writ of our said lord the king, called a *latitat*, against one C. D. directed to the sheriff of Worcestershire, reciting, that, &c. [*here recite the writ.*] And the jurors, &c. do further present, that the said writ so sued out as aforesaid, by the said A. B. was by him sued out with intent to declare against the said C. D. in the same court, in a certain plea of debt for a certain penalty supposed to have been incurred by the said C. D. by reason of his, the said C. D. having before that time caused a certain waggon of him the said C. D. drawn by more than four horses, to wit, eight horses, to travel and pass upon a certain turnpike road in the parish of H. in the said county of W. the fellies of the wheel of the same waggon, at the time the same so passed along the same road, being of less breadth and gage than

For compounding an offence against a penal statute (a)

(a) See form, 1 Wentw. 399. Stark. 770, and ante, 223, note (a).

Second count.

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three inches from side to side, against the form of the statute in such case made and provided. And the jurors, &c. do further present, that the said A. B. late of, &c. being a person of an evil-disposed mind, and not regarding the statute in that case made and provided, on, &c. at the said, &c. unlawfully, and for wicked gain's sake, did take upon himself to compound and agree with the said C. D. for the said offence, without the order or consent of the said court of our said lord the king, before the king himself, out of which same court the said writ against the said C. D. was so sued out as aforesaid, and then and there did exact, receive, and have, of and from the said C. D. a large sum of money, to wit, five pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of £5. 5s. of lawful money of Great Britain, as and for a reward for compounding with the said C. D. for the said offence, and desisting from further prosecuting his said suit, against the form, &c. and against the peace, &c. And the jurors, &c. further present, that the said A. B. being an evil-disposed person, and disregarding the statute in that case made and provided, on the said, &c. at the said, &c. by colour and pretence of a certain process before that time by him taken out and prosecuted at the court of our said lord the king, before the king himself, against the said C. D. for and on account of a certain offence supposed to be committed by the said J. B. in this, to wit, that the said C. D. had before that time caused a certain waggon of him the said C. D. drawn by more than four horses, to wit, by five horses, to travel and pass upon a certain turnpike road, in, &c. the fellies of the wheels of the same waggon, at the time the same so passed along the said road, being of less breadth and gage than nine inches, from side to side, contrary to a certain statute in that case made and provided, he the said A. B. unlawfully and for wicked gain's sake, did take upon himself to make composition with the said C. D. for the said last-mentioned offence, and did then and there take and receive of and from the said C. D. a large sum of money, to wit, five pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of £5. 5s. of lawful money of Great Britain, as and for a reward for his the said A. B.'s desisting and forbearing to prosecute the said C. D. for the said last-mentioned offence, without the order and consent of any of our said lord the king's courts at Westminster, for that purpose had and received, against the form of the statute in that case made and provided, and against the peace, &c. And the jurors, &c.

further present, that the said A. B. being an evil-disposed person, and disregarding the statute in that case made and provided, on the said, &c. at the said, &c. upon colour and pretence of the said C. D. having committed a certain offence against a penal law, in this, to wit, that the said C. D. had before that time caused a certain waggon of him the said C. D. drawn by more than four horses, to wit, by five horses, to travel and pass upon a certain turnpike road in, &c. aforesaid, the fellies of the wheels of the same waggon, at the time the same so passed along the same road, being of less breadth and gage than nine inches from side to side, contrary to a certain statute in that case made and provided, did unlawfully, and for wicked gain's sake, and without the order and consent of any of our said lord the king's courts at Westminster, take upon himself to make composition with the said C. D. for the said supposed offence last-mentioned, and did then and there take and receive of and from the said C. D. a large sum of money, to wit, ten pieces of gold coin of the proper coin of this kingdom, called guineas, of the value of £10. 10s. of lawful money of Great Britain, as and for a reward for his the said T. N.'s forbearing to prosecute the said T. B. for the said last-mentioned supposed offence, against the form, &c. and against the peace, &c.

Third count.

That C. D. &c. &c. being an evil-disposed person, and not regarding the statute in such case made and provided, nor fearing the pains and penalties therein contained, heretofore, to wit, on, &c. with force and arms, at, &c. upon and by colour and pretence of a certain matter of offence, then and there pretended to have been committed by one E. F. against a certain penal law, *i. e.* by and upon colour and pretence that the said E. F. being a person vending and exposing to sale gloves and mittins by retail, had not caused the words "dealer in gloves," to be painted or written in large or legible characters over the door of the said shop, but had neglected so to do, against the form of a certain statute made and passed in the 25th year of the reign of his present majesty, intituled, "An act," &c. [*set forth the title of the act,*] unlawfully, wilfully, and corruptly did compound and agree with the said E. F. who

Upon 18 Eliz. c. 5.
for taking money
to compound a
qui tam action(a).

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(a) Made perpetual by 27 Eliz. c. 16. and 31 Eliz. c. 5; see note (a), ante, 223.

was then and there surmised to have offended against the same statute, in manner aforesaid, for the said pretended offence, and did thereupon then and there take, of and from the said E. F. a certain sum of money, to wit, the sum of £— of lawful, &c. as and by way of composition for the said pretended offence, and in order to prevent an information from being laid against the said E. F. for the same, without the consent of any of his majesty's courts at Westminster, and without any lawful authority for so doing, to the great hindrance and obstruction of public justice, in contempt, &c. to the evil example, &c. against the form, &c. and against the peace, &c.

On 18 Eliz. c. 5, for compounding a penal action, the penalty having been incurred by evading the stamp duties on a receipt (a).

That A. B. late of, &c. being an evil-disposed person, and disregarding the statute in that case made and provided, heretofore, to wit, on, &c. at, &c. upon colour and pretence that one C. D. after the 1st day of August, which was A. D. 1791, had, contrary to the form of the statute in that case made and provided, written and signed divers receipts, discharges, and acquittals given, and each and every one thereof, for and upon the payment of money, and each one thereof, at the time of the writing and signing thereof, liable to the stamp duty imposed and charged by a certain act of parliament made and passed in the 31st year, &c. without the said receipts, discharges, and acquittals, or any of them, being first duly stamped or marked with a proper stamp or mark, or with any stamp or mark resembling the same, did, without process, and without order and consent of any of his majesty's courts at Westminster, *procure, obtain, and take* from the said C. D. as well a consent and order of the said C. D. for the discharge of the said A. B. from and out of the custody of the marshal of the Marshalsea of our lord the king, before the king himself, in a certain action then depending in the said court, at the suit of the said C. D. against the said A. B. for a certain large sum of money, to wit, a debt of £— and upwards, then due and owing from the said A. B. to the said C. D. in which said action the said defendant was there a prisoner in the custody of the marshal of the Marshalsea of our said lord the king, before the king himself, as also a discharge and release by the said C. D. from a great part, to wit, £—, part of the said debt, as and for a reward to the said A. B. not to cause or procure the said C. D.

(a) See note (c), ante, 223.

to be prosecuted for the said supposed offences, against the form of the statute in that case made and provided, to the evil example, &c. and against the peace, &c. [Second count like the first, only inserting instead of the words in italic the following, viz. made composition with the said C. D. for his said supposed offences, by then and there procuring and obtaining, &c.]

FOR MISPRISION OR CONCEALMENT OF FELONY.

That P. P. [*here set out the offence by the original offender by a felonious stealing, as usual, and then proceed as follows*]. For misprision of felony (a). And the jurors, &c. do further present, that W. B. late of, &c. being a person of a wicked, dishonest, and evil mind and disposition, and well knowing the premises, and also well knowing the name and person, and usual place of resort of the said P. P., but devising and intending as much as in him lay, to obstruct and hinder the due course of law and justice, and to cause the said P. P. to go and escape unpunished for the said offence so by him committed as aforesaid, afterwards, to wit, on, &c. aforesaid, at the said, &c. unlawfully, maliciously, wickedly, wilfully, and contemptuously did conceal, keep secret, and neglect to discover the said felony so committed by the said P. P. as aforesaid, and the name, person, and usual place of resort of the said P. P. did utterly refrain and forbear to disclose and make known, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. Note, there were five other counts, each of them separately alleging the goods stolen to be the property of different persons, but in other respects the same as the first count.

(a) This indictment was settled by a very able crown lawyer. As to this offence, see ante, vol. i. 3 & 4. Toml. Index, tit. Misprision.

BARRETRY.

Indictment for
barretry (*a*).

That C. B. late of, &c. on, &c. and on divers other days and times as well before as afterwards, was, and yet is, a common

(*a*) See other precedents, Williams, J. Barretors. Cro. C. C. 206. 7th ed. 2 Stark. 2nd ed. 706. West. Indictments, s. 75, 257, 338. Trem. P. C. 224. *The offence.* As to this offence in general, see 2 Saund. 308, note 1. Hawk. b. 1. c. 81. 4 Bla. Com. 134. Burn, J. Barretry. Williams, J. Barretors. Barretry is an offence at common law, though 34 Edw. 3. c. 1, directs the mode of punishing it. 2 Saund. 308, note 1. See also, 8 Eliz. c. 2. 3 Edw. 1. c. 33. It signifies the habitual moving, exciting, or maintaining suits and quarrels, either at law or otherwise. All kinds of disturbances of the peace, spreading false rumours, and calumnies, &c. come under this denomination, Co. Lit. 368. But a man cannot be thus guilty in respect of a single act, Hawk. b. 1. c. 81. s. 5. 2 Saund. 308, n. 1. Nor can an attorney be indicted for this crime, merely from maintaining another in a groundless action, 3 Mod. 97, 8. It has been said that feme coverts cannot be thus indicted, 2 Rol. Rep. 39, but the better opinion seems to be otherwise, for as they are able to excite quarrels, they ought to answer for them. Hawk. b. 2. c. 81. s. 6. To this offence may also be referred another of a similar nature, of equal malignity and audaciousness, that of suing another in the name of a fictitious plaintiff, either one not in being at all, or one who is ignorant of the suit. This offence, if com-

mitted in any of the king's superior courts, is left, as a high contempt, to be punished at their discretion. But in courts of a lower degree, where the crime is equally pernicious, but the authority of the judges not equally extensive, it is directed by stat. 8 Eliz. c. 2. to be punished by six months imprisonment, and treble damages to party injured, 4 Bl. Com. 134. *Indictment.* The case of Barretry is one of those excepted instances where it is not necessary to charge any specific act, but the allegation that the defendant is a *Common Barretor* will suffice; the reason of which is, that the offence charged consists in habitual conduct, and not in a singular malfeasance, 1 T. R. 754. 2 Saund. 308, n. 1. Hawk. b. 2. c. 25, s. 59. See ante, vol. i. 230. But the prosecutor must, before the trial, inform the defendant by a notice of the particular acts on which he intends to rely, or the court will not suffer him to proceed, 1 T. R. 754. 2 T. R. 586. 2 Saund. 308, n. 1. 1 New Rep. 93, 95. 2 Atk. 339. 5 Mod. 18, and no other acts can be given in evidence than those thus specified, 6 Mod. 622. No place need be specified in the indictment, because the accusation involving several acts may fairly be supposed to have occurred at several places, and therefore the trial must be from the body of the county, 2 Saund. 308, n. 1. Hawk. b. 2. c. 81. s. 12. The indictment must conclude *contra pacem*, 2 Saund. 308,

barretor (a); and that he the said C. B. on the said, &c. and on divers other days and times at, &c. aforesaid, divers quarrels, strifes, suits, and controversies among the honest and quiet liege subjects of our said lord the king, then and there did move, procure, stir up, and excite, to the evil example, &c. *and common nuisance of the liege subjects of our said lord the king (b)*, and also *against the peace, &c. (c)*.

MAINTENANCE.

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That A. O. late of, &c. on, &c. with force and arms, at, &c. aforesaid, did unjustly and unlawfully maintain and uphold a certain suit, which was then depending in the court of our said

For maintenance of an action of debt (d).

n. 1. Cro. Jac. 527. Justices of the peace have authority to try and determine this offence by virtue of their commission, Yelv. 46. Cro. Jac. 32.—*Punishment*. Common persons, convicted of this offence, are punishable by fine and imprisonment. Hawk. b. 2. c. 81. s. 14. But if they belong to the profession of the law, they will be disabled from practising in future, *id. ib.* And by 12 Geo. 1. c. 29. s. 4, if any one who has been convicted of common barrettry practise as an attorney, solicitor, or agent in any suit, the court, upon complaint, shall examine it in a summary way, and if proved shall direct the offender to be transported for seven years; and see stat. 34 Ed. 3. c. 1.

(a) These words are absolutely requisite, and cannot be supplied by any words which have the same signification, 1 Sid. 282. 6 Mod. 311. 2 Saund. 308, n. 1.

(b) The indictment must state this in the conclusion, 2 Stra. 1246.

(c) This is material, Cro. Jac. 527. 2 Saund. 308, n. 1. The indictment need not conclude “contrary to the form,” &c. but if it does it will not be vitiated by that allegation; as, though the offence existed at common law, the mode of trial is regulated by statute, Cro. Eliz. 148. Cro. Car. 340. Cro. C. C. 8th edit. 40.

(d) See precedents, Burn, J. Maintenance. 2 Stark. 704, 2d edit. Trem. P. C. 178. Winch. 504. 538. West, 89. 137. 312, 313. 351. Herne, 493, 4. Rast. Ent. 431. Co. Ent. 364, 5.—*The offence*. See, in general, Hawk. b. 2. c. 83. Com. Dig. Maintenance. 4 Bla. Com. 134, 5. Burn, J. Maintenance. Williams, J. Maintenance. 4 Term Rep. 340. Jac. Dict. tit. Champerty. Rast. Ent. 119. Tomlins’ Law Dictionary, Maintenance. Maintenance signifies a malicious, or at least officious, interference in a pursuit in which the party has no interest, to assist either with money or advice, to prosecute or defend the action, 4 Bla. Com. 131, 135.

lord the king before the king himself, between A. P. plaintiff, and A. D. defendant, in a plea of debt, on the behalf of the said A. P. against the said A. D. contrary to the form of the statute (a) in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt, &c. to the great damage of the said A. D. and against the peace, &c.

The like for maintenance of an action of ejectment in the Exchequer and a bill in equity (b).

That one L. P. late of, &c. yeoman, on, &c. and for the space of one whole year then next following, at Westminster, in the county of Middlesex, maintained a certain action then pending in the court of our said lord the king of his Exchequer, before his barons of the said Exchequer, between one C. W. plaintiff, and one D. L. defendant, of a plea of trespass and ejectment of farm, of one hundred acres of land, &c. to the great damage of the said C. W. in contempt of our said lord the king and his laws, against the form of the statutes, &c. and against the peace, &c. [Second count,] maintained on the part of D. J. and W. J. a certain suit by English bill, in the court of Chancery of our said lord the king at Westminster in the county of Middlesex, pending between D. J. and W. J. the complainants, and D. L. the defendant, of and concerning the title to the said tenements, in contempt, &c. against the form, &c. and against the peace, &c.

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Hawk. b. 2. c. 83. 4 T. R. 340. Maintenance is an offence at common law, Hawk. b. 2. c. 83. s. 38, and further prohibited, on pain of fine and imprisonment, by 1 Edw. 3. c. 14. 20 Edw. 3. c. 4. 1 R. 2. c. 4. 32 Hen. 8. c. 9.

Champerty is an offence of a similar description, but of greater atrocity, being a bargain to divide the land (*campum partire*) or other subject in dispute, on condition of his carrying it on at his own expence, 4 Bla. Com. 135. It is subject to the same punishment as maintenance, *id. ib.* See also Com. Dig. Maintenance, Bac. Ab. Champerty. Burn, J.

Maintenance, and Williams, J. Maintenance. Jac. Law Dict. Champerty. If an attorney prosecute an action to be paid his costs in gross, it should seem it would amount to champerty. Com. Dig. Attorney, (B. 14.) Hob. 117, and see 2 Atk. 298. 4 Bro. C. C. 350. 18 Ves. 313, in Chancery. 2 Marsh. 273. Tidd's Prac. 8th edit. 326.

(a) See the statutes referred to in note (a), *supra*. In the next precedent the indictment concludes "against the form of the statutes" in the plural.

(b) See notes to last precedent, and Trem. P. C. 178.

FOR DISSUADING A WITNESS TO GIVE EVIDENCE.

That on, &c. a certain writ of our said lord the king, called a *subpœna ad testificandum*, had been, and was duly issued and tested by and in the names of C. D. of, &c. at, &c. the same day and year aforesaid, the said C. D. then and there being *custos rotulorum* in and for the said county, which said writ was directed to E. S. and G. H. by which said writ our said lord the king commanded, &c. [*recite the writ.*] And the jurors, &c. do further present, that a copy of the said writ was on, &c. at, &c. duly served on the said I. K. who then and there had notice to appear and give evidence according to the exigency of such writ, and that the evidence of said I. K. at the time of issuing the said writ, and from thence until, and upon the said, &c. therein mentioned, was material and necessary to have been given before the said grand jury on the said bill of indictment, so to be preferred against the said A. B. as aforesaid, and that at the sessions of the peace, holden by adjournment at Saint Mary Newington, aforesaid, in and for the said county of S. — on, &c. aforesaid, such bill of indictment was preferred against the said A. B. to and before a certain grand jury then and there duly assembled in that behalf. And the jurors, &c. do further present, that A. B. late of, &c. being an evil-disposed person, and contriving and intending to obstruct and impede the due course of justice, on, &c. at, &c. unlawfully and unjustly dissuaded, hindered, and prevented the said I. K. from appearing before the said justice at the said sessions of the peace, holden as aforesaid, to testify the truth and give evidence before the said grand jury on the said bill of indictment, so preferred against the said A. B. as aforesaid, (and the said I. K. in consequence thereof, did not so appear and give evidence according to the exigency of said writ;) to the great obstruction, hindrance, and delay of public justice,

Dissuading a witness from giving evidence against a person indicted (a).

(a) This is an offence indictable at common law, Hawk. b. 1. c. 21. s. 15. The mere attempt to stifle evidence is also criminal, though the persuasion should not succeed, on the general principle now fully established, that an incitement to commit any crime

is itself criminal, 6 East, 464. 2 East, 5, 21, 2. 2 Stra. 904. 2 Leach, 925, for a conspiracy to prevent a witness from giving evidence, 2 East, 362. Knowingly making use of a false affidavit is indictable, 8 East, 364. 2 Stra. 1141.

in contempt, &c. to the evil, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that on the said, &c. a certain other writ of our said lord the king had duly issued, directed to the said E. F. and G. H. by which said last-mentioned writ, our said lord the said king commanded the said E. F. and G. H. that, &c. [*recite the writ.*] And the jurors, &c. do further present, that the evidence of the said I. K. at the time of issuing the said last-mentioned writ, and from thence until, and upon the said, &c. therein mentioned, was material and necessary to have been given before the said grand jury in the said bill of indictment, so to be preferred against the said A. B. as aforesaid. And the jurors, &c. do further present, that the said A. B. being an evil-disposed person, &c. [*same as first count, saying "endeavoured to dissuade," &c. and omitting the allegation between the brackets.*]

AGAINST JUSTICES FOR OPPRESSION, &c.

Information against a justice of the peace for causing a woman to be publicly whipped as a disorderly person, without any view, information, or proof exhibited against her (a).

[*Commencement of information as ante, 7, and then state that the defendant, on, &c. was one of the justices, &c. as ante, 182.*] And that he the said T. M. being such justice as aforesaid, and being a person of a wicked and malicious mind and disposition, and having no regard to justice, nor to the duty of his said office as such justice of the peace, but unlawfully, wickedly, and maliciously devising, and intending to discredit, disgrace, aggrieve, and oppress one M. M. of, &c. single woman, and to expose the said M. M. to ignominy, shame, and scandal, and disgrace, did, on, &c. with force and arms, at, &c. aforesaid, unjustly, unlawfully, wickedly, and

(a) See other precedents, Cro. C. C. 242 to 246. Cro. C. A. 232, 5. Plead. Assist. 426. 4 T. R. 451. Hand. Prac. 97. 4 Wentw. 418 to 430. 6 Wentw. 455 to 460. Stark. 593 to 601. *The offence.* If a magistrate abuses his authority from corrupt motives, he is punishable criminally by indictment or information. 4 Bla. Com. 354, n. 17. But if a justice of the peace act ille-

gally, without corrupt intention, an information will not be granted, but the party complaining will be left to proceed by indictment, id. ibid. Nor will the court grant an information unless the prosecutor will undertake to bring no action, and the application be made within the second term after the offence committed, and notice of the intention to make it be previously given to the

maliciously, and without any reasonable or probable cause whatsoever, under mere colour and pretence of his said office as such justice as aforesaid, cause and procure the said M. M. (being a young woman about the age of fifteen years, and being a person of good name, fame, credit, and reputation, and in the peace of God and our said lord the king) to be taken into custody, imprisoned, and stripped quite naked down to her waist; and to be unlawfully, publicly, cruelly, and severely whipped and lashed upon her naked back, with divers whips and cords by one J. R. then being the common beadle of the parish aforesaid, at a certain common whipping post then erected and being in the common market-place of the town of B. in, &c. aforesaid, in the presence and view of a great number of people then and there assembled and gathered together, as a loose, idle, and disorderly person, (the said fifth day of May, in the year aforesaid, being a public market-day in the said town of B.) by means of which said whipping and lashing the back and shoulders of the said M. M. were greatly cut, bruised, and wounded; and the said M. M. by means of the premises became sick, weak, and distempered, and lost a great quantity of blood, which issued and flowed from the said cuts and wounds; whereas in truth and in fact, neither the said T. M. nor any other justice of the peace of our said lord the king, in and for the said county of S. or elsewhere, had then and there any knowledge by his or their own view, or had then or there received or taken any information, examination, or other evidence upon oath whatsoever, that the said M. M. was or had been a loose, idle, or disorderly person; and whereas in truth and in fact the said M. M. never was a loose, idle, or dis-

justice, *id. ibid.* and *ante*, vol. i. Index, Information. But where they have acted partially, maliciously, or corruptly, they are liable to an indictment, 1 T. R. 692. 1 Burr. 556. 3 Burr. 1317. 1716. 1786. 1 Wils. 7. And, in some cases, a mere improper interference appears to be thus cognizable. Thus where two sets of magistrates have a concurrent jurisdiction, and one set appoint a meeting to licence ale-houses, their jurisdiction attaches so as to

exclude the others, though they may all meet together on the first day; and if, after such appointment, the other set meet and grant other licences on a subsequent day, the proceeding is illegal and subjects them to an indictment, 4 T. R. 451.—*Indictment.* It is sufficient, in an indictment against any officer, to aver that he, *being such*, &c. committed the offence, 5 T. R. 623; and proof that he acted as such would suffice, 4 T. R. 366.

Second count.

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orderly person; to the great damage, scandal, and discredit of the said M. M. in contempt, &c. in manifest violation of the liberties of the subjects of our said lord the king of this realm, to the great perversion of public justice, in breach and violation of the duty of his office as such justice as aforesaid, to the evil and pernicious example, &c. and against the peace, &c. And the said coroner and attorney, &c. that the said T. M. being such justice as aforesaid, unlawfully, wickedly, and maliciously devising and intending to injure and prejudice the said M. M. as aforesaid, afterwards, to wit, on the said, &c. with force and arms, at, &c. unlawfully, wickedly, and maliciously, and without any reasonable or lawful cause whatsoever, in and upon the said M. M. in the peace of God and our said lord the king then and there being, did make an assault, and her the said M. M. then and there unlawfully (and without any view by him the said T. M. or any other justice assigned to keep the peace of our said lord the king in this realm, had, or any legal information exhibited or made to him the said T. M. by any person whatsoever, of any offence having been committed by the said M. M.) did beat, bruise, wound, whip, and ill-treat so that her life was greatly despaired of, and other wrongs to the said M. M. then and there did, to the great damage of the said A. M. to the evil example, &c. and against the peace, &c. [Add a third count for the assault and whipping by the defendant being a justice, without reference to the pretence on which it was inflicted; and a fourth count for a common assault, as post.]

Information against a justice for causing a person to be imprisoned for want of bail, in a matter not cognizable before him, and ordering him to be kept in close confinement, without pen, ink, or paper, or the sight of any friend (a).

[Commencement of information as ante, 7, and state defendant being a justice, as ante, 182, and then proceed as follows.] And the said coroner and attorney of our said lord the king further gives the court here to understand and be informed, that on, &c. at, &c. one J. H. of R. in the said county of S. innholder, was apprehended and taken into custody, by one A. B., (who then and for a long time both before and afterwards, was one of the constables of R. aforesaid,) and by the said A. B. carried and conveyed in custody before the said R. R. being such justice as aforesaid, at his then dwelling-house, situate and being at L., &c. and there, to wit, at L. aforesaid, ex-

(a) See precedent, Cro. C. C. 8th ed. 242. Stark. 598, 2d edit. and ante, 236, note (a).

amined by the said R. R. so being such justice as aforesaid, touching and concerning a certain misdemeanor, supposed to have been then lately committed and done by the said J. H. (in vilifying the character and hurting the trade of one W. D. of L. aforesaid, miller;) and the said J. H. was then and there charged and accused before the said R. R. being such justice as aforesaid, with having committed the said supposed offence: and the said coroner and attorney, &c. and further, &c. that the said R. R. being such justice as aforesaid, wrongfully, unjustly, wickedly, and maliciously contriving and intending to hurt, injure, oppress, aggrieve, and prejudice the said J. H. in this respect, and to put him to great charges and expences of his money, and to cause him to undergo and suffer great pain, torture, and anguish of body and mind, and wholly to ruin him, on the said, &c. at, &c. aforesaid, after the said examination of the said J. H. of, upon, and concerning the premises aforesaid, ordered and directed, that the said J. H. should find sureties for his personal appearance at the then next general quarter session of the peace of our said lord the king, to be held in and for the said county of S. to answer the said charge; and because he the said J. H. did not, nor could conveniently, find such sureties as aforesaid, he the said R. R. so being such justice as aforesaid, further wrongfully, unjustly, wickedly, and maliciously contriving and intending to hurt, injure, oppress, aggrieve, and prejudice the said J. H. as aforesaid, then and there, to wit, on the said, &c. at, &c. aforesaid, wrongfully, unjustly, and maliciously, against the will of the said J. H. and contrary to the laws of this realm, (by virtue and colour of a certain warrant of commitment for that purpose made, under the hand and seal of him the said R. R. being such justice as aforesaid) committed the said J. H. a prisoner, to a certain prison, called the house of correction, situate at, &c. aforesaid, to be there safely kept, until he the said J. H. should find such sureties as aforesaid, and until he should be further examined concerning the premises; and then and there ordered, directed, and commanded, the then keeper of the said prison, to keep the said J. H. under close confinement in the said prison, and to deny him the use of pen, ink, and paper, and to let no letter be delivered to or from the said J. H. in any manner whatsoever, and also to let nobody see him or speak to him; and the said coroner and attorney, &c. further, &c. that the said R. R. being such justice as aforesaid, by virtue and under colour of the said warrant, order, and di-

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rection, did, on the said, &c. and for a long time, to wit, for the space of four days then next following, at, &c. aforesaid, wrongfully, wickedly, maliciously, and unjustly cause and procure the said J. H. to be closely confined and imprisoned in the said prison, and to be debarred, denied, and restrained from the use of pen, ink, and paper, and from the free access of his relations and friends to him in the said prison, to wit, at, &c. aforesaid, whereby the said J. H. during all that time, underwent and suffered great pain, torture, hardship, and anguish, both of body and mind, and was deprived of his liberty, and prevented and hindered from finding such sureties as aforesaid, and was put to great charges and expences, in and about the obtaining his release and discharge from such commitment and imprisonment, contrary to the laws and customs of this realm, in great violation of the true constitution of this kingdom, and of the liberties, rights, and franchises of the subjects thereof, to the evil and pernicious example, &c. and against the peace, &c. [*Conclusion of information, as ante, 7.*]

Information against justices, for illegally discharging a person committed under the vagrant act by another magistrate (a).

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[*Commencement of information, as ante, 7.*] That on, &c. at, &c. one C. B. was brought before J. S. esquire, one of his majesty's justices, &c. [*as ante, 182,*] by one W. E. a constable, and charged of being a rogue and vagabond, within the intent and meaning of an act of parliament, made in the seventeenth year of the reign of his late majesty king George the Second, intituled, &c. [*set forth the conviction*] and was thereupon convicted and adjudged by the said justice to be a rogue and vagabond, and within the intent and meaning of the said statute, and was ordered and adjudged by the said justice to be committed to the house of correction at Wellclose Square, in the liberty aforesaid, for the space of fourteen days from the date thereof, as by the record of the said conviction, bearing date, &c. appears; and the said coroner and attorney, &c. further, &c. that the said J. S. so being such justice as aforesaid, afterwards, to wit, on, &c. last aforesaid, at the liberty aforesaid, in the county of M. aforesaid, in execution of the said judgment and conviction, did make and issue his warrant in writing under his hand and seal, bearing date the same day and year last aforesaid, directed to the governor of the house of correction, at Wellclose Square, or his deputy, whereby the said

(a) See form, 4 Wentw. 424, and the precedent and note, ante, 236, note (a).

governor or his deputy, were commanded by the said justice to receive, &c. [*set out the warrant of commitment*], which said warrant, afterwards, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said governor of the house of correction, at Wellclose Square aforesaid, in due form of law to be executed, together with the said C. B. by virtue of which said warrant, he the said governor kept and detained the said C. B. in his custody in the said house of correction, at Wellclose Square aforesaid, for the cause in the said warrant as above specified, as by the said warrant he was commanded. And the said coroner and attorney, &c. that afterwards, and within the said space of fourteen days from the date of the said warrant, and whilst the said C. B. was so confined in the said house of correction, and in the custody of the said governor thereof, and there ought to have remained and continued for the said space of time in the said warrant for that purpose expressed for the cause aforesaid, under and by virtue of the said warrant, to wit, on the said, &c. at, &c. aforesaid, one R. B. late of, &c. esq. and one J. R. late of, &c. esq. then and still being two of his majesty's justices, in and for the said liberty, well knowing the said premises, but devising, designing, contriving, and intending to pervert the due course and administration of law and justice, and to make the same subservient to their own private lucre and gain, and to their own private wicked purposes and intentions, did, under colour and pretence of their authority, as such justices as aforesaid, with force and arms, unlawfully, wilfully, unjustly, and corruptly cause and procure the said C. B. to be discharged, and to escape and go at large from and out of the custody of the said governor of the said house of correction, and from and out of the said house of correction, in which he the said C. B. was so confined as aforesaid, for the cause aforesaid, and to go unpunished, by then and there wilfully, wickedly, unlawfully, and corruptly making and issuing, and causing to be delivered to the said governor of the said house of correction at Wellclose Square, aforesaid, a certain warrant in writing, under the respective hands and seals of the said R. B. and J. R. (they the said R. B. and J. R. then being such two of his majesty's justices of the peace in and for the said liberty as aforesaid) bearing date the day and year last aforesaid, directed to the keeper of the tower gaol, Wellclose Square, (meaning thereby the said governor of the said house of correction at Wellclose Square) or his deputy, by which said last-mentioned warrant,

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they the said justices required the said keeper to discharge out of his custody the body of the said C. B. if detained for no other cause than what was mentioned in his commitment, dated the seventeenth day of July, 1787, (meaning the said warrant of commitment of the said C. B. so made by the said J. S., esq. so being such justice of the peace for the said liberty, and hereinbefore mentioned) he the said C. B. having, as therein alleged, found sureties before them the said R. B. and J. R. to appear at the general quarter sessions of the peace, to be holden for the said liberty, on the tenth day of September then next, to answer such matters and things as might be objected against him the said C. B. and to appeal against the said conviction, by means whereof he the said C. B. was afterwards, and before the expiration of fourteen days from the date of the said warrant of commitment, to wit, on, &c. at, &c. aforesaid, discharged and set at large from the custody of the said governor of and from, and out of the said house of correction and tower gaol, and did thereby then and there escape and go at large, and unpunished for the said offence, in manifest breach and violation of their duties as such justices of the peace as aforesaid, to the great hindrance and mockery of the public justice of this kingdom, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. And the said coroner and attorney, &c. that afterwards, that is to say, on the said, &c. at and in the liberty of his majesty's said Tower of London, in the county aforesaid, the said J. S. esq., then and yet being one of his majesty's said justices of the peace, in and for the said liberty, did make his certain other warrant in writing under his hand and seal, bearing date the same day and year last aforesaid, directed to the governor of the said house of correction at Wellclose Square, or to his deputy, whereby he the said governor or his deputy, were commanded, &c. [*here again recite the commitment*] which said last-mentioned warrant, afterwards, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said governor of the house of correction at Wellclose Square aforesaid, in due form of law to be executed, together with the said C. B. ; by virtue of which said last-mentioned warrant, he the said governor kept and detained the said C. B. in his custody in the said house of correction at Wellclose Square aforesaid, for the cause in the said last-mentioned warrant above specified, as by the said last-mentioned warrant he was commanded. And the said coroner and attorney of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the court

Second count, another information, and merely stating that the defendants ordered the discharge, without reciting the warrant for discharge.

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here further to understand and be informed, that afterwards, and within the said space of fourteen days from the date of the said last-mentioned warrant, and whilst the said C. B. was so confined in the said house of correction, and in the custody of the said governor thereof, and there ought to have remained and continued for the said space of time, in the said last-mentioned warrant for that purpose specified for the cause aforesaid, under and by virtue of the said last-mentioned warrant, to wit, on the said, &c. the said R. B. and J. R. (they the said R. B. and J. R. then and still being two of his majesty's justices in and for the said liberty) well knowing the said premises, but devising, designing, contriving, and intending to pervert the due course and administration of law and justice, and to make the same subservient to their own private lucre and gain, and to their own private wicked purposes and intentions, at the liberty aforesaid, in the county aforesaid, under colour and pretence of their authority, as such justices as aforesaid, did, with force and arms, wilfully, unjustly, and corruptly order, cause, and procure the said C. B. to be discharged, and to escape and go at large, from and out of the custody of the said governor of the said house of correction, and from and out of the said house of correction, in which he the said C. B. was so confined as aforesaid, for the cause aforesaid, and to go unpunished, by means whereof he the said C. D. was afterwards, and before the expiration of fourteen days from the date of the said last-mentioned warrant of commitment, to wit, on the said, &c. at, &c. aforesaid discharged, and set at large from the said custody of the said governor, of, from, and out of the said house of correction, and did thereby then and there escape and go at large and unpunished, in manifest breach and violation, &c. [*conclusion as in the first count.*] And the said coroner and attorney, &c. that heretofore, to wit, on the said, &c. in, &c. the said J. S. esquire, then and still being one of his majesty's justices of the peace, in and for the said liberty, did, within the said liberty, in the said county of M. make and issue his certain other warrant in writing, under his hand and seal, bearing date the day and year last aforesaid, directed to all constables, headboroughs, and other his majesty's officers of the peace for the said county of M. and liberty of the said Tower of London, and to J. H. for that purpose especially appointed, by which said last-mentioned warrant, they the said constables, headboroughs, and other officers, and the said J. H. to whom the same was directed as aforesaid, were in his majesty's name com-

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Third count, for preventing the officer from taking another person charged with a similar offence before a magistrate.

manded, upon sight thereof, to take and bring, &c. [*set out the warrant*], which said last-mentioned warrant, afterwards, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said W. E. then and there being such constable as aforesaid, to be executed in due form of law; by virtue of which said last-mentioned warrant, he the said W. E. to whom the said last-mentioned warrant was so directed and delivered as aforesaid, afterwards, to wit, on, &c. last aforesaid, at and in the liberty aforesaid, in the county aforesaid (having possession of the said last-mentioned warrant), took and apprehended the said W. P. by his body, and was then and there about to take and convey, and would then and there have taken and conveyed him before the said J. S. esq. (so being such justice making and issuing the said last-mentioned warrant as aforesaid), according to the exigency of the said last-mentioned warrant, and as it was lawful for him to do for the cause aforesaid; but the said coroner and attorney, further, &c. that after the said caption, and whilst the said W. P. remained in the custody of the said W. E. under and by virtue of the said last-mentioned warrant, and when the said W. E. was proceeding to take and convey him, the said W. P. before the said J. S. esq. (so being such justice making and issuing the said last-mentioned warrant as aforesaid), according to the exigency of the said last-mentioned warrant, they, the said R. B. and J. R. (so then and there being two of his majesty's justices of the peace in and for the said liberty, but having no regard to the duty of their said office, or for the laws and statutes of this realm, but unjustly and corruptly devising, designing, contriving, and intending to pervert the due course of law and justice, and to make the same subservient to their own private wicked purposes and intentions, and also to cause and procure the said W. P. to be discharged, and to go at large and unpunished for the said last-mentioned offence), then and there, that is to say, on the day and year last aforesaid, at the liberty aforesaid, in the county aforesaid, with force and arms, unlawfully, unjustly, corruptly, and violently, and without any reasonable or probable cause whatsoever, did obstruct, prevent, and hinder the said W. E. from conveying and taking the said W. P. before the said J. S. esq. (so being such justice, and making and issuing the said last-mentioned warrant as aforesaid) according to the exigency of the said last-mentioned warrant, and on the contrary thereof, did then and there, with force and arms, &c. unlawfully, unjustly, and corruptly, under colour and pretence of their authority, as such

justices as aforesaid, discharge and set at large, and cause and procure to be discharged and set at large, the said W. P. from the custody of the said W. E. (so being the person to whom the said last-mentioned warrant was directed as aforesaid), under and by virtue of the said last-mentioned warrant, and from the said warrant before the said W. P. could be taken and conveyed before the said J. S. esq. (so being such justice as aforesaid, and so making and issuing such last-mentioned warrant), according to the exigency of the said last-mentioned warrant, by reason whereof, he the said W. E. was then and there wholly hindered and prevented from executing the said last-mentioned warrant, as he was thereby commanded, and by reason whereof, he the said W. P. did then and there escape and go at large and unpunished for the said last-mentioned offence, in manifest breach and violation, &c. [*Conclude as before, and as ante, 7.*]

[*Commencement of information, as ante, 7.*] That on, &c. B. M. esq. then and yet being one of the justices of our said lord the king, assigned, &c. [*as ante, 182,*] did, within the said county of Middlesex, that is to say, at the parish of, &c. in the said county, make his certain warrant in writing under his hand and seal, bearing date the day and year last above mentioned, directed to the keeper of his majesty's gaol of Newgate, whereby it was and is recited, that M. W. &c. [*here set out the warrant*], which said warrant, afterwards, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said keeper of his majesty's said gaol of Newgate, in due form of law to be executed, together with the said M. W.; by virtue of which said warrant, he the said keeper of his majesty's said gaol of Newgate, kept and detained the said M. W. in his custody in the same gaol for the cause in the said warrant above specified. And the said coroner and attorney of our said sovereign lord the king, for our said sovereign lord the king, giveth the court here further to understand and be informed, that afterwards, and during the time the said M. W. was in the said gaol of Newgate, and in the custody of the said keeper of his majesty's said gaol aforesaid, for the cause aforesaid, that is to say, on, &c. one T. L. of, &c. then and yet being one of the

Information against a justice for knowingly taking insufficient sureties for the appearance of a person charged with seducing manufacturers to go into foreign parts, without notice to the prosecutor or committing justice (a)

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(a) See form, 4 Wentw. 418. are now repealed by 5 Geo. 4, c. 97.
All the acts relative to seducing artificers to go abroad, &c.

justices of our said lord the king, assigned, &c. [*as ante*, 182.] well knowing the premises, but devising, designing, contriving, and intending to obtain and acquire to himself a large sum of money, and other advantages; and also devising, designing, contriving, and intending to pervert the due course of law and justice, and to make the same subservient to his own private lucre and gain, and to his own private wicked purposes and intentions, did, at, &c. aforesaid, under colour of divers false pretences and informations, and for his oyn lucre and gain, and for other unlawful considerations, with force and arms, unlawfully, wilfully, and corruptly procure the said M. W. to be discharged, and to escape and go at large, from and out of the custody of the said keeper of his majesty's said gaol of Newgate, in which he the said M. W. was so confined as aforesaid, for the cause aforesaid, without taking sufficient sureties for the personal appearance of the said M. W. at the then next general gaol delivery to be holden for the said county of M. to answer the aforesaid complaint against the said M. W. and by then and there knowingly taking insufficient sureties for the personal appearance of the said M. W. at the said next general gaol delivery to be holden for the said county; and also without any notice being first given to the prosecutor of the said M. W. or to the said B. M. esquire, who had so committed the said M. W. as aforesaid, for the cause aforesaid, of any persons whatsoever, intending to become sureties for the personal appearance of the said M. W. as aforesaid, by then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, making a certain warrant in writing, under the hand and seal of him the said T. L. then being one of his majesty's justices of the peace for the said county of M. as aforesaid, bearing date, &c. aforesaid, directed to the keeper of Newgate, or his deputy, and by which said last-mentioned warrant, he the said T. L. did require the said keeper of his majesty's said gaol of Newgate (meaning the said keeper of his majesty's said gaol of Newgate, for the said county of M. or his deputy) to discharge out of custody the body of the said M. W. aforesaid, detained for no other other cause than what is mentioned in the warrant of commitment of B. M. esq. (meaning the aforesaid warrant of B. M. esq. one of his majesty's justices of the peace of the said county of M. who had so granted the first above-mentioned warrant as aforesaid), dated the 19th day of July then last, on the oath of T. D. for seducing P. J. &c. [*all the names*] being natives of this kingdom, and manufacturers in glass, to go into

foreign service; and also in and by the said last-mentioned warrant of him the said T. L. falsely alleging that he the said T. L. had taken sufficient sureties for his the said M. W.'s personal appearance at the then next general gaol delivery to be holden for the county of M. at Justice Hall, in the Old Bailey, in the suburbs of the city of London, by means whereof he the said M. W. was afterwards, that is to say, on the said, &c. discharged from the said gaol of N. and by means whereof, he the said M. W. then and there did escape and go at large, and also by means thereof, he the said M. W. did not appear at the said then next general gaol delivery holden for the said county of M. to answer to certain indictments then and there (to wit, at the said then next general gaol delivery for the said county of M.), preferred against him for the matters of complaint in the said warrant of commitment above specified; nor hath since appeared, to be dealt with according to law, to the great hindrance of public justice, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. And the said coroner and attorney, &c. further, &c. that afterwards, that is to say, on the said, &c. the aforesaid M. W. was duly committed to his majesty's said gaol of N. for the county of M. for want of sureties; being charged on the oath of one T. D. with seducing several persons (being natives of this kingdom, and manufacturers in glass), to go into foreign service; and that the aforesaid T. L. well knowing the premises, afterwards, and during the time the said M. W. was kept and detained in the same gaol for the cause aforesaid, that is to say, on the said, &c. he the said T. L. (then and yet being one of the justices of our said lord the king, assigned, &c.) [*as ante*, 182] but having no regard for the duty of his said office, or for the laws and statutes of this realm, but unjustly and corruptly devising, designing, contriving, and intending to pervert the due course of law and justice, and to make the same subservient to his own private wicked purposes and intentions, and also devising, designing, contriving, and intending to cause and procure the said M. W. to be discharged and go unpunished for the said last-mentioned offences, did then and there, to wit, on the said, &c. at, &c. aforesaid, with force and arms, unlawfully, unjustly, and corruptly cause and procure the said M. W. to be discharged out of the said gaol, and to go unpunished for the said last-mentioned offences, by then and there making a certain other warrant, purporting to be a warrant under the hand and seal of him the said T. L. and to bear date the same day, and to be directed to the keeper

Second count, states former defendant to have been committed for want of sureties.

of N. or his deputy, and thereby directing and requiring the said keeper of N. or his deputy, to discharge the body of the said M. W. and also in and by the said last-mentioned warrant, suggesting that he the said T. L. had taken sufficient sureties for the personal appearance of him the said M. W. at the then next general gaol delivery to be holden for the said county of Middlesex, at justice-hall, in the Old Bailey, in the suburbs of the city of London; whereas in truth and in fact he the said T. L. did not take sufficient sureties for the personal appearance of the said M. W. at the said then next general gaol delivery to be holden for the said county of Middlesex, as in and by the said last-mentioned warrant is most falsely suggested, by reason and by means whereof he the said M. W. was discharged out of the said gaol of N., in which he was so confined for the matters last-mentioned as aforesaid, and did not appear at the said then next general gaol delivery holden for the said county of M., as in and by the said last-mentioned warrant is most falsely suggested; by reason and means whereof he the said M. W. was discharged out of the said gaol of N., in which he was so confined for the matters last-mentioned as aforesaid, and did not appear at the said then next general gaol delivery holden for the said county of M. to answer for the same, and also by reason and means thereof he the said M. W. did escape and go unpunished for the said last-mentioned offences for which he had been so detained in the said gaol of N. as aforesaid, to the great hindrance of, &c. [*as before.*] And the said coroner and attorney, &c. that afterwards, that is to say, on, &c. aforesaid, the said M. W. was duly committed to his said majesty's said gaol of N. for the said county of M. by B. M. esq. (then and yet one of the justices of our said lord the king, assigned, &c.) [*as ante*, 182] by a certain other warrant under his hand and seal, bearing date the day and year last-above-mentioned, for seducing Joseph (meaning Joseph Pyne), J. S., W. F., T. S., J. T., W. B. and J. K. (being natives of this kingdom, and manufacturers in glass) to go into foreign service; and that afterwards, to wit, at the session of the general gaol delivery of N. holden for the said county of M. at justice hall in the Old Bailey, in the suburbs of the city of London, on, &c. (the same being the first session of general gaol delivery, holden in the said county after the said 19th day of July) the said M. W. was in due form of law indicted in one indictment by the name of M. W. late of, &c. amongst other things, for unlawfully, &c. [*state the substance of the indictment*] and that he the said

Third count, states commitment as in the first, and that various indictments were preferred, but defendant took insufficient sureties, and prisoner did not appear.

M.W. in the said last-mentioned warrant named, was also, at the same session of general gaol delivery of N. holden for the said county of M., in due form of law indicted in another indictment by the name of M. W., otherwise M. W. late of the parish of St. John, Wapping, in the county of M., yeoman, among other things, for unlawfully enticing, &c. [*set out the substance of the second indictment*] and that he the said M. W. in the said last-mentioned warrant named, was also, at the same session of general gaol delivery of N. holden for the said county of M., in due form of law indicted, &c. [*set out this and other indictments in like manner.*] And the said coroner and attorney of, &c. further, &c. that the said T. L. after the time of the said M. W.'s being so committed to the said gaol of N. by such last-mentioned warrant as aforesaid, and during the time of his the said M. W.'s being detained in the said gaol of N. by virtue of such warrant, and before the said session of general gaol delivery of N. so holden for the said county of M., that is to say, on the said, &c. aforesaid, at, &c. aforesaid, (being then such justice of the peace of our said lord the king as aforesaid, and well knowing the grievous pains and penalties he the said M. W. would by the laws and statutes of this realm become subject and liable to, by means of the several offences so as aforesaid charged against him, in and by such last-mentioned warrant, but wickedly, unlawfully, and corruptly devising, contriving, and intending, contrary to the duty of his office, and the laws of this kingdom, to cause and procure the said M. W. to escape and go unpunished for the offences so as aforesaid charged against him, in and by the said last-mentioned warrant), he the said T. L. did then and there, with force and arms, unlawfully, wilfully, unjustly, and corruptly cause and procure him the said M. W. to be discharged out of the said gaol, and to go unpunished for the said offences in the said last-mentioned warrant mentioned, by his the said T. L. then and there making a certain other warrant under his hand and seal, purporting to bear date on the said, &c. and to be directed to the keeper of N. or his deputy, and which said warrant is according to the purport and effect following, that is to say, [*here set out the warrant*] whereas in truth and in fact he the said T. L. had not taken sufficient sureties for the personal appearance of the said M. W. at the said then next general gaol delivery to be holden for the said county of M., as in and by the said last-mentioned warrant is most untruly alleged, and he the said T. L. then and there well knew the same, by reason

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and means whereof he the said M. W. was then and there discharged out of the said gaol of N. in which he was so detained for the cause aforesaid, and did not appear at the said then next general gaol delivery holden for the said county of M., or at any subsequent session of general gaol delivery holden for the said county, to answer to all or any or either of the said indictments so aforesaid there depending against him, but therein made default, and by reason and means thereof all and every the said indictments still remain unanswered and undefended, and he the said M. W. hath hitherto escaped and gone unpunished for the several offences for which he was so committed to the said gaol of N. as aforesaid to the total perversion of the public justice of this kingdom, in contempt, &c. [*as before, and then add usual conclusion, ante, 7.*]

Information
against justices,
for granting a li-
cence for an ale-
house, after the
same had been
refused before by
the magistrates
at a general ses-
sion (a).

[*Commencement of information as ante, 7.*] That on, &c. at, &c. a general meeting of the justices assigned to keep the peace of our said lord the king, in and for the county of Surrey, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, acting in a certain hundred in the said county of S., called the hundred of R., in the county aforesaid, was duly held for the purpose of licencing persons to keep common inns or alehouses within the said hundred, according to the form of the statutes in such case made and provided; and the said coroner and attorney of, &c. further, &c. that H. C. as a person residing and dwelling at R. aforesaid, in the said county of S. within the said hundred, called the hundred of R. at the said meeting of the said justices holden before A. D. esq. the reverend J. W. clerk, and W. N. esq. then and still being three of the keepers of the peace and justices of the said lord the king, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county of S., acting in and for the said hundred, did then and there require the said justices to grant unto him the said H. C. a licence to keep a common alehouse or victualling house, in a certain house wherein the the said H. C. then intended to inhabit and dwell at R. aforesaid, within the hundred aforesaid, for the space of one year, from, &c. And the said coroner and attorney, &c. further, &c.

(a) See 4 Wentw. 455. 364. 1 Burr. 556. 3 Burr. 1317. Stark. 2d edit. 595. Ante, and 1716. 1786. Burn, J. Ale- the note ante, 236, note (a). houses.

that the said A. D. esq., J. W. clerk, and W. N. esq., being such justices as aforesaid, and being the only acting justices of the said meeting, did then and there on, &c. aforesaid, (having taken all and singular the premises into their consideration) refuse to grant a licence under their hands and seals for keeping a common alehouse or victualling house, in the said house at R. aforesaid, within the hundred aforesaid, as by law they had a right to do, and did not adjourn the said meeting to any other time or place. And the said coroner and attorney, &c. further, &c. that the reverend T. R. F. late of M. in the said county of S. clerk, and the reverend P. W. late of H. in the said county, clerk, being two of the keepers of the peace of our said lord the king, and justices of our said lord the king, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county of S. well knowing all and singular the premises aforesaid, and having notice that a licence had been refused to be granted by the said A. D. esq. J. W. clerk, and W. N. esq. at the said meeting as aforesaid, being such justices as aforesaid, acting in and for the said hundred of R., in manner and for the purpose aforesaid, but not having any regard for the laws of this realm, but being minded, and intending to increase the number of common alehouses and victualling houses in the hundred of R. aforesaid, in the county of S. aforesaid, in defiance of legal magistracy and good order and government, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, did unlawfully, wickedly, wrongfully, and corruptly meet and assemble together as keepers of the peace, and justices of our said lord the king, for the said county as aforesaid, for the purpose of granting a licence for the keeping a common alehouse or victualling house within the said house, for which he the said H. C. had so required a licence (a), notwithstanding the said A. D. esq. J. W. clerk, and W. N. esq. being such justices as aforesaid, acting in and for the said hundred of R. in manner and for the purpose aforesaid, had refused to grant a licence for the keeping a common alehouse or victualling house, in the said house, as by law they had a right to do: and notwithstanding they the said T. R. F. and P. W. well knew the same, and being then and there so met and assembled they

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(a) *Quære* if the several counts ought not to aver, that the defendants granted the licence for the same time as the other magistrates had refused it for.

Second count.

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Third count.

the said T. R. F. and P. W. did unlawfully, wickedly, wrongfully, and corruptly grant their licence under their hands and seals to and for W. E. to keep a common alehouse or victualling house, in the same house for which he the said H. C. had so required a licence as aforesaid (a), the said T. R. F. and W. P. well knowing that such licence for the keeping a common alehouse or victualling house in the said house had been refused by the said A. D. esq. J. W. clerk, and W. N. esq. being such justices as aforesaid, acting in and for the said hundred of R., at the said meeting by them held on the said, &c. at, &c. aforesaid, for the hundred of R. aforesaid, in breach and violation of the duty of the said J. R. F. and P. W. as such keepers of the peace and justices as aforesaid, in contempt, &c. and against the peace, &c. And the said coroner and attorney of, &c. further, &c. that the said T. R. F. and P. W. being two of the keepers of the peace of our said lord the king, and justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county of S. not having any regard for the laws and statutes of this realm, but regardless of their duty as such keepers of the peace of our said lord the king, and justices of our said lord the king as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, did unlawfully, wrongfully and corruptly grant their licence, under their hands and seals, to W. E. to keep a common alehouse or victualling-house, in a certain other house in R. aforesaid, for the space of one year, from, &c. aforesaid, they, the said T. R. F. and P. W. then and there well knowing that a licence for a common alehouse or victualling-house in such last-mentioned house had been refused to be granted by the aforesaid A. D. esq. J. W. clerk, and W. N. esq. being such justices as aforesaid, acting in and for the said hundred of R. aforesaid, at a meeting held before that time, that is to say, on, &c. aforesaid, at, &c. aforesaid, for the hundred of R. aforesaid, for the purpose of licensing persons to keep common inns or ale-houses within the aforesaid hundred of R. in the county of S. aforesaid, according to the form of the statute in such case made and provided, and then and there well knowing that they the said T. R. F. and P. W. could not lawfully grant such licence in breach and violation of their duty as such keepers of the peace and justices as aforesaid, in contempt, &c. [*as before.*] And the said coroner and

(a) See note (a), ante.

attorney, &c. that H. W. P. as a person residing and dwelling at R. aforesaid, in the said county of S. within the said hundred called the hundred of R. at the said meeting of the said justices before the said A. D. esq. J. W. clerk, and W. N. esq. then and still being three of the keepers of the peace and justices of our said lord the king, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county of S. acting in and for the said hundred, did then and there require the said justices to grant unto him, the said H. W. P. a licence to keep a common ale-house, inn, or victualling-house, in the house wherein he the said H. W. P. did then inhabit and dwell, at R. aforesaid, within the hundred aforesaid, for the space of one year from, &c. And the said coroner and attorney of, &c. further, &c. that the said A. D. esq. J. W. clerk, and W. N. esq. being such justices as aforesaid, and being the only acting justices at the said meeting, then and there, on the said, &c. (having taken all and singular the premises into their consideration), did refuse to grant their licence under their hands and seals, for the keeping a common ale-house, inn, or victualling house, wherein the said H. W. P. then did inhabit and dwell, at R. aforesaid, within the hundred aforesaid, as by the law they had a right to do, and did not adjourn the said meeting to any other time or place. And the said coroner and attorney of, &c. further, &c. that the said T. R. F. and P. W. being two of the keepers of the peace of our said lord the king, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county of S. well knowing all and singular the premises aforesaid, and having notice that a licence had been refused to be granted by the said A. D. esq. J. W. clerk, and W. N. esq. at the said meeting as aforesaid, being such justices as aforesaid, acting in and for the said hundred of R. in manner and for the purpose aforesaid, but not having any regard for the laws of this realm, and in defiance of legal magistracy, good order, and government, afterwards, to wit, on, &c. with force and arms, at R. aforesaid, in the county of S. aforesaid, did unlawfully, wickedly, wrongfully, and corruptly meet and assemble together as keepers of the peace and justices of our said lord the king for the said county as aforesaid, for the purpose of granting a licence for the keeping a common ale-house, inn, or victualling-house, in the said house wherein he the said H. W. P. did then inhabit and dwell at R. aforesaid, notwithstanding the said A. D. esq. J. W. clerk, and W. N. esq.

being such justices as aforesaid, acting in and for the said hundred of R. in manner, and for the purpose aforesaid, had refused to grant such licence for the keeping a common ale-house, inn, or victualling-house in the said last-mentioned house, as by law they had a right to do, and notwithstanding they, the said T. R. F. and P. W. well knew the same, and being then and there so met and assembled, they, the said T. R. F. and P. W. did unlawfully, wickedly, wrongfully, and corruptly grant their licence, under their hands and seals, to and for E. B. to keep a common ale-house, inn, or victualling-house in the house wherein he, the said H. W. P. did then inhabit and dwell, the said T. R. F. and P. W. well knowing that a licence for keeping a common ale-house, inn, or victualling-house in the said house wherein he, the said H. W. P. did then inhabit and dwell, had been refused by the said A. D. esq. J. W. clerk, and W. N. esq. being such justices as aforesaid, acting in and for the said hundred of R. at the said meeting by them held on the said, &c. at, &c. aforesaid, for the hundred of R. aforesaid, in breach and violation of the duty of the said T. R. F. and P. W. as keepers of the peace, and justices aforesaid, in contempt, &c. [*as before.*] And the said coroner and attorney of, &c. further, &c. that the said T. R. F. and P. W. being two of the keepers of the peace of our said lord the king, and justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county of S., not having any regard for the laws and statutes of this realm, but regardless of their duty as such keepers of the peace and justices of our said lord the king as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, wrongfully, and corruptly grant their licence, under their hands and seals, to and for one E. B. to keep a common ale-house, inn, or victualling-house, in a certain other house in R. aforesaid, for the space of one year, from, &c. aforesaid, they the said T. R. F. and P. W. well knowing that a licence for keeping a common ale-house, inn, or victualling-house in such last-mentioned house, had been refused to be granted by the aforesaid A. D. esq. J. W. clerk, and W. N. esq. being such justices as aforesaid, acting in and for the said hundred of R. aforesaid, at a meeting held before that time, that is to say, on, &c. aforesaid, at, &c. aforesaid, for the purpose of licensing persons to keep common inns or ale-houses within the aforesaid hundred of R. in the county of S. aforesaid, according to the form of the statute in such case

Fourth count.

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made and provided, and then and there well knowing that they, the said T. R. F. and P. W. could not lawfully grant such licence, in breach and violation of their duty as such keepers of the peace and justices as aforesaid, in contempt, &c. [*as before, and common conclusion of information, as ante, 7.*]

That R. B. G. late of, &c. on, &c. and long before, was, and continually from thence hitherto hath been, and still is, one of the justices of our said lord the king, assigned, &c. [*as ante, 182,*] and acting in a certain division, in the said county of M. commonly called the U. division, in which said division, the parish of H. in the said county of M. then was and now is situate. * And the, &c. do further present, that on the said, &c. aforesaid, at U. in the said county of M. a general meeting of the justices of our said lord the king, assigned, &c. [*as ante, 182,*] acting in and for the said division of the said county, in which the parish of H. then was and is situate as aforesaid, was duly held for the purpose of licensing persons to keep common inns and alehouses, within the said division, according to the form of the statute in such case made and provided, by and before the said R. B. G. as such justice as aforesaid, and certain other persons, to wit, B. T. F., T. B., and E. H. esquires, then and there also being justices assigned, &c. [*as ante, 182,*] and acting in and for the said division. And the jurors aforesaid, upon their oath aforesaid, do further present, that one B. H. being a person of good fame and of sober life and conversation, and being then and there desirous of keeping a common inn or alehouse, in a certain house, situate and being within the said parish of H. in the said county of M. and within the division aforesaid, commonly called and known by the name or sign of the Magpie and Pigeons, (in which said house, the trade and business of a victualler was then carried on, under, and by virtue of a certain licence before them, for that purpose duly granted unto one J. M. then lately deceased, he the said B. H. did then and there at the said general meeting apply to the said justices, to grant to him the said B. H. a licence to keep a common inn or alehouse in the said house so called and known by the name or sign of the Magpie and

Indictment
against justices,
for partiality in
refusing to grant
a licence (a).

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(a) See precedent, 4 Wentw. 3 Burr. 1317, 1716, 1786. 364, and note to the precedent, Burn, J. Alehouses. ante, 236, n. (a). 1 Burr. 556.

Pigeons as aforesaid, for the space of one year, to commence on, &c. aforesaid, and did then and there at the said general meeting, produce to and before the said justices, so then and there met for the purpose of granting such licences as aforesaid, a certificate under the hands of the then churchwardens and overseers of the poor, and of seven then reputable and substantial householders, and inhabitants of the said parish of H. in which the said house for which such licence was so applied for by the said B. H. as aforesaid, was and is so situate as aforesaid, of his the said B. H.'s being a person of good fame and sober life and conversation, and the said B. H. was then and there ready to enter into a recognizance, with sufficient sureties for the maintenance of good order and rule within the same house, pursuant to the statute in such case made and provided. And the jurors, &c. do further present, that the said R. B. G. so being such justice as aforesaid, and acting as aforesaid, not regarding his duty as such justice, but wrongfully and maliciously and corruptly intending to oppress, injure, hurt, and aggrieve the said B. H. by colour of his said office of a justice of the peace as aforesaid, did then and there at the said meeting so held, on the said, &c. at, &c. aforesaid, corruptly, maliciously, and unjustly, and without any lawful or reasonable cause whatsoever, and from motives of private partiality and favor unto and towards one Richard Smith, the then keeper of a certain other alehouse, situate in the division aforesaid, that is to say, a certain common ale or victualling house, then kept by the said R. S. situate in, &c. aforesaid, in the said division, commonly called and known by the name or sign of the Coach and Horses, refuse to grant to the said B. H. the said licence, so by him applied for as aforesaid, and did then and there corruptly, maliciously, and unjustly prevent and hinder such licence from being granted to the said B. H. ; to the great damage, &c. B. H. in breach and violation of the duty of the said R. B. G. as such justice as aforesaid, to the evil example, &c. and against the peace, &c. And the jurors, &c. [omits statement, in the commencement, of the defendant's being a justice, and commences at the asterisk, and continues as in first count. Third count states an application by B. H. for a licence to keep " a common inn, or ale-house, in a certain house, situate and being in, &c. and within the division aforesaid, for the space of, &c." and that he produced " the certificate, by law required of him, the said B. H. being a person of good fame, &c. and was then and there ready with sufficient

Second count.

surety, according to the form of the statute, &c.” See precedent at length, 4 Wentw. 364.]

AGAINST CORONERS FOR NEGLIGENCE, &c.

That on, &c. at, &c. one A.B. was drowned and suffocated in a certain pond, and of that drowning and suffocating she the said A.B. then and there instantly died, and that the body of the said A.B. at, &c. aforesaid, lay dead, of which one C.D. late of, &c. gentleman, afterwards, to wit, on the said, &c. then being one of the coroners of our said lord the king, for the county aforesaid, at, &c. aforesaid, had notice; nevertheless the said C. D. not regarding the duty of his said office in that behalf, afterwards, to wit, on the said, &c. at, &c. aforesaid, to execute his said office of coroner, of and concerning the premises, and to take inquisition for our said lord the king, according to the laws and custom of this realm, concerning the death of the said A.B. unlawfully, obstinately, and contemptuously did neglect and refuse, and that the said C.D. no inquisition in that behalf as yet hath taken, to the great hindrance of justice, in contempt, &c. and against the peace, &c.

Indictment against a coroner for refusing to take an inquisition (a).

(a) See other precedents, Cro. C. C. 8th edit. 170. Cro. C. C. 7th edit. 303. Dick. Sess. 67. Stark. 618. 2d ed. As to the duties, powers, and liabilities of a coroner, see Imp. Off. Cor. Com. Dig. Justices of the Peace, D. 7. London, K. 6. Officer, G. 1. Bro. Abr. Coroner. Burn, J. Coroner. Williams, J. Coroner. Cro. C. C. 170. Dick. Sess. 68. Imp. Off. Coroner, 3d edit. 431. 1 Bla. Com. 346, 347, by Chitty. By 3 Edw. 1. c. 9. coroners concealing felonies or not doing their duty through favor to the misdoers, shall be imprisoned a year, and fined at the king's pleasure. And by 3 Hen. 7. c. 1. if any

coroner be remiss, and make not inquisition, upon the view of the body dead, and certify the same to the gaol delivery, he shall forfeit to the king 100 shillings. By the 25 Geo. 2. c. 29. “if a coroner be convicted of extortion, wilful neglect of duty, or misdemeanor in his office, the court before whom he shall be so convicted may adjudge that he shall be removed from his office,” and as to the writ *coronatore exonerando*, see 2 Inst. 32. 2 Hawk. P. C. c. 9. s. 12. Reg. Orig. 177, 8. F. N. B. 164. The offences of neglect and misbehaviour are also indictable at common law, like the other violations of magisterial duty.

Indictment
against a coroner
for not returning
his inquisition ac-
cording to evi-
dence (b).

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That on, &c. one A.D. late of, &c. came to her death in the same parish, in the county aforesaid, by one mortal bruise, received on the right side of the head of her the said A.D. by some person or persons (to the jurors aforesaid as yet unknown) whereof one W.G. late of B. in the said county of Hereford, gentleman, being one of the coroners of our said lord the king, in and for the county aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, had notice. And the jurors, &c. do further present, that the said W.G. being such coroner as aforesaid* afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did cause a certain jury of twelve good and lawful men of the said county, duly sworn in that behalf, to inquire (upon view of the body of the said A.D. there lying dead) by what means, and in what manner the said A.D. came to her death, and that one M.D. and one D.K. good and lawful men then and there appeared before the same coroner, and the said jurors so sworn to inquire, touching the death of the said A.D. as aforesaid, were then and there in due form and manner sworn before the said coroner and that jury, to give true evidence concerning the death of the said A.D. and that the said M.D. and D.K. then and there upon their oath aforesaid, did give evidence to the said coroner and jury of that inquisition, that on the same day and year aforesaid, they the said M.D. and D.K. had found the said A.D. in a ditch in the same parish, dead, and that it appeared to them as if some person or persons had struck the said A.D. a violent blow upon the right side of her head, with a certain stone, there lying by her side, which had occasioned her death, nevertheless the said W.G. the coroner aforesaid, not regarding the duty of his said office, nor the laws of this realm, did return an inquisition under his hand and seal unto the justices of our said lord the king, duly assigned to hold the assizes and general session of oyer and terminer, of our said lord the king, at —, in and for the said county of H. on, &c. [*the date of the inquisition*] that the said A.D. died a natural death, to the manifest subversion of justice, to the evil example, &c. and against the peace, &c.

Against a town-
ship for a misde-
meanor in bury-
ing a body with-
out notice to the
coroner (a).

That on, &c. one W. D. died at the township of C. in the county of N. of a violent death, and not of a natural death,

(b) See precedent, Cro. C. C. 7th ed. 304, and supra, note (a).

(a) It is indictable as a misdemeanor to bury the body

before, or without sending for the Coroner, 1 Salk. 377. and see 3 Leon. 207. Cro. Car. 252; and ante, 255, n. (a).

that is to say, the said W. D. then and there died of a violent wound before that time, to wit, on, &c. at the township aforesaid, in the county aforesaid, given to the said W. D. by some person or persons to the jurors aforesaid unknown, and that the body of the said W. D. on, &c. at, &c. aforesaid, lay dead, and that at the several times aforesaid, C. F. and W. S. were coroners of our lord the king, for the said county of N. to wit, at, &c. aforesaid, of which said premises, the inhabitants of the said township of C. in the said county, afterwards, to wit, on, &c. at, &c. aforesaid, had notice, nevertheless the inhabitants of the said township of C. in the county aforesaid, well knowing the premises, but not regarding their duty in that behalf, did not, nor did any of them, at any time send or give any notice to or for the said C. F. or the said W. S. or either of them, nor to or for any coroner of our said lord the king for the said county of N. to view the body of the said W. D. so lying dead as aforesaid, but unlawfully, obstinately, and contemptuously omitted and neglected so to do, nor had the said C. F. or W. S. or either of them, or any coroner of our said lord the king for the said county, any notice to view the body of the said W. D. so lying dead as aforesaid, nor had the said C. F. or W. S. or either of them, or any coroner of our said lord the king for the said county, any notice that the body of the said W. D. was so lying dead as aforesaid, neither did the said C. F. or the said W. S. or either of them, or any coroner of our said lord the king for the said county of N. at any time view the body of the said W. D. so lying dead as aforesaid, nor was any inquisition taken on the view of the body of the said W. D. as by law required in that behalf, but the body of the said W. D. was afterwards, to wit, on, &c. unlawfully and contemptuously buried and interred at the township of C. aforesaid, in the county aforesaid, without any view being had of the said body of the said W. D. by the said C. F. or W. S. or either of them, or any coroner of our said lord the king, for the said county of N. and without any inquisition being taken on the view of the body of the said W. D. as by law required in that behalf, to the great hindrance of justice, in contempt of our said lord the king, and against the peace, &c.

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AGAINST INTERIOR OFFICERS FOR NEGLIGENCE AND MISCONDUCT.

Against a high constable for not issuing his precept to the petty constables, requiring them to give notice to all victuallers to appear with their licences, in order to have them renewed (*a*).

That J. D. and B. B. esquires, then and yet being two of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] at, &c. in the south division of the hundred of P. in the said county of O. duly made their certain warrant in writing under their hands and seals, as such justices as aforesaid, directed to the chief constable of the south division of the hundred of P. in the said county, whereby the said justices in

(*a*) See similar forms, 4Went. 347, and other precedents against constables, 1 T. R. 316. 2 Burr. 801. 5 East, 372. 5 T. R. 607. Cro. C. C. 143 to 145. 151. 154. Cro. C. A. 63, 481. 4 Wentw. 345. 347. Stark. 2d edit. 602 to 625. 2 Ld. Raym. 1189. *The offence*. An indictment lies at Common Law against all subordinate officers for neglect and misconduct in the discharge of their official duties. See the above precedents and notes. Thus a constable may be indicted for refusing to pursue a felon upon hue and cry on notice. Cro. Eliz. 654, an overseer for refusing to join with his colleagues in making a poor's rate, 1 Stra. 101, and for not obeying an order of justices, 1 T. R. 316, as well as against any other persons for disobedience to such order, 2 Burr. 799. And by 11 G. 1. c. 4. s. 6, "if any mayor, bailiff or bailiffs, or other chief officer or officers of any city, borough, or town corporate, shall voluntarily absent himself or themselves from, or knowingly and designedly prevent or hinder the election of any other mayor, bailiff, or other chief officer in the same city, borough, or town corporate, upon the day or within the time appointed by charter

or ancient usage for such election, the person or persons so offending, being thereof lawfully convicted, shall, for every such offence, suffer imprisonment for the space of six months without bail or mainprize, and shall be for ever disabled to take, hold, or exercise any office belonging to the same city, borough, or corporation." But it has been decided, that the voluntary absence of the chief officer of a corporation upon the charter-day of the election of his successor is not indictable under this act; unless his presence as such chief officer is requisite, in order to form a corporate assembly with sufficient powers to proceed in the election, 5 East, 372. Where a duty is thrown on a body consisting of several persons, each is individually liable for his own misdeeds or omissions, 5 T. R. 607. An overseer of the poor is also indictable for any wilful neglect of his duty; thus if he relieve where there is no necessity, or neglect to provide for the poor, he is liable to be indicted for a misdemeanor, 2 Nolar, P. L. 260. So if he ill-treat the poor, as by keeping them in filthy and unwholesome rooms, he is liable to be indicted, *id. ibid*. A refusal to account within

his majesty's name commanded the said constable, on sight thereof, to issue his precepts to all petty constables and tithing men within the said chief constable's division, strictly requiring them to give notice to all victuallers and retailers of ale, beer, or

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four days after the appointment of their successors, and a neglect to make a rate to reimburse constables, is also punishable by the same proceedings, 5 Mod. 179. 2 Salk. 609. Where he is indicted for a heinous offence, the court will not in general quash the indictment, but leave the defendant to take advantage of any error by demurrer or motion in arrest of judgment. The 33 Geo. 3. c. 55. s. 1, gives power to two justices at petty sessions to punish constables, and peace and parish officers for neglect of duty. *Indictment.* An indictment against officers for contempt, in disobeying an order of justices, must state that the order was served on all of them; and if it states that it was served on some of them by name, and on others whom it does not thus designate, it will be bad, on demurrer, as it respects all of them,* 8 East, 52. In an indictment against a public officer for a breach of duty, it is sufficient to state generally that he is such officer, without setting forth his appointment to the office, 5 T. R. 607, and an allegation that the defendant being such officer, &c. is sufficient, Hawk. b. 2. c. 25. s. 112. Cro. Jac. 610. 2 Mod. 128. 2 Rol. Rep. 286. Moore, 606. 2 Lev. 229. Raym. 378. Nor is it necessary in an indictment for disobedience of orders, to aver that they were not revoked, for that will be presumed until the contrary appears, 5 T. R. 607. Nor when a public officer is charged

with a breach of duty in certain acts within the limits of his office, is it necessary to state that they were within his knowledge, for this will be inferred from the nature of the trust reposed in him, 5 T. R. 607. And though, on an indictment for not accepting the office, the appointment must be produced, and parol evidence will not suffice, (1 Stra. 101. 1 Sess. Cas. 141.) yet, in indictments for misconduct, it may suffice to prove that the defendant has previously acted as such officer, 3 T. R. 635, note (a). 4 T. R. 366. Leach, C. L. 515. 1 New Rep. 210. 1 Phil. Ev. 6th ed. 215. Where a constable is indicted for not following upon hue and cry, it must be alleged that notice was given him; and the place of notice must be averred, Cro. Eliz. 654, 5. An indictment against a constable, "*quia male et negligenter se gessit in executione officii*," is too general, and may be quashed on that account, 1 Stra. 2. It seems that an indictment against a constable for not returning the warrant of two justices for levying a forfeiture on a conviction of deer-stealing will be good, though the convictions are not set forth at length, and there is no reference to the record, though the venire is not awarded to all the places named in the indictment; and though there is no time or place mentioned in the warrant for its return, 2 Ld. Raym. 1189, though Ld. Holt thought the last objection fatal, id. 1194, 5.

other liquors, personally to appear before them, the said two justices, and such other of his majesty's justices of the peace, of the said county, as should be assembled at the house of T. P., known by the sign of the King's Arms, at, &c. on, &c. then next, by ten of the clock in the forenoon of the same day, and bring with them respectively, their then respective last licences, in order then and there respectively to renew the same, and then and there respectively to enter into recognizances, with two sufficient securities, according to the statute in such case made and provided, and the said chief constable was, by the said warrant, also required to give notice to the said several petty constables and tithing men, that no licence to keep an ale-house would be granted to any person not licensed the year then preceding, unless such person should produce at the meeting of the said justices a certificate under the hands of the parson, vicar, or curate, and the major part of the churchwardens and overseers, or else of three or four reputable and substantial householders and inhabitants of the parish, or place, where such ale-house was to be, setting forth, that such person was of good fame, and of sober life and conversation, and that they the said petty constables and tithing men, should respectively give notice to the said victuallers, ale-house keepers, and retailers of ale, beer, and other liquors, that at the said justices' general meeting for that division for renewing their licences, he the said chief constable would be then and there ready to make return to them the said justices of his the said chief constable's due execution of the said warrant. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said warrant was, afterwards, to wit, on, &c. at, &c. within, &c. delivered to one W. R., who then and there, and from thence, until and on, and after the said third day of, &c. next after the said making of the said warrant there, was high constable of the said south division of the said hundred of P. in the said county, to be executed in due form of law; yet that the said W. R., late of, &c. in the said county of O., so being high constable of the said south division, of the said hundred of P., in the said county, not regarding his said duty of high constable as aforesaid, did not, at any time after the said warrant was so delivered to him as aforesaid, to be executed in form aforesaid, issue out his precepts to all or any of the petty constables or tithing men, within the said high constable's division, according to the form and effect of the said warrant, as he was by the said warrant commanded,

but therein, in contempt of the said warrant, he contemptuously and unlawfully wholly failed and made default, contrary to his duty of his said office of high constable of the said division of the hundred of P. aforesaid, against the form and effect of the said warrant of the said then justices, so delivered to him as aforesaid, to the evil example, &c. in contempt, &c. and against the peace, &c.

Middlesex. The jurors, &c. that on, &c. at, &c. one J. P. was brought by one J. W. then being one of the headboroughs of the same parish before J. S. esquire, there, then, and yet one of the justices of our said lord the king, assigned, &c. [*us ante*, 182,] and that the said J. P., then and there, was charged upon the oath of one S. B. before the said justice, for violently assaulting her in breach of his majesty's peace, which said J. P. then and there was examined before the said J. S., the justice aforesaid, concerning the said offence, so as above charged upon him, upon which and for that the said J. P. could not then find sureties before the same justice, for his personal appearance at the then next general quarter session of the peace, to be holden for the county aforesaid, to answer of and concerning the premises, he the said J. S. being such justice as aforesaid, at, &c. aforesaid, in due form of law, did make a certain warrant under his hand and seal, bearing date, on, &c. directed, &c. [*as the direction may be*,] to the keeper of bridewell, the same being a certain gaol and prison of our said lord the king, situate and being at, &c. commanding the said keeper that, &c. [*set forth the warrant*,] which same warrant afterwards, to wit, on the said, &c. at, &c. aforesaid, was delivered to the said J. W., then being one of the headboroughs of the same parish, and then and there having the said J. P. in his custody for the aforesaid cause, and the said J. W. then and there was required and commanded by the said J. S. the aforesaid justice, immediately to convey the said J. P. to the said gaol and prison, and to deliver the said J. P. to the keeper thereof, together with the aforesaid warrant. And the jurors, &c. do further present, that the said J. W. late of, &c. aforesaid, yeoman, afterwards, to wit, on the said, &c. then as aforesaid, being one of the headboroughs of the same parish, and then

Against a headborough, for refusing to convey a person to prison, committed by a justice of the peace (a).

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(a) See precedent, Cro. C. C. 7th ed. 290. Stark. 2d ed. 602. Ante, 257, 8, note (a).

having the said J. P. in his custody, for the cause aforesaid, at, &c. aforesaid, unlawfully and contemptuously, did neglect and refuse to convey the said J. P. to the said bridewell, being such gaol and prison as aforesaid, together with the said warrant, as he the said J.W. by virtue of his said office according to law, should and ought to have done, to the great hindrance of justice, to the evil example, &c. and against the peace, &c.

Against a constable for not appointing any watch, and absenting himself from watching (*a*)

That A. B. late of, &c. on, &c. and long before, was, and still is one of the constables of the parish aforesaid, in the county aforesaid, and that the aforesaid A. B. by reason of his office aforesaid, ought to appoint sufficient watch to be kept through the whole night by men, being inhabitants of the same parish, in convenient places within the parish aforesaid, for the preservation of the peace of our said lord the king, and for the apprehending of malefactors and suspicious persons; nevertheless the said A. B. so being such constable, and neglecting his duty in this behalf, in the night of the aforesaid 9th day of August, in the year aforesaid, or in any part of the same night, at the parish aforesaid, in the county aforesaid, did not appoint any watch to be kept by men, being inhabitants of the same parish, within the parish aforesaid, but then and there the whole night aforesaid, from his said office, voluntarily and obstinately did absent himself, and contemptuously did make default therein, in contempt, &c. to the evil example, &c. and against the peace, &c.

Against a constable for neglecting to return his presentments at the assizes (*b*).

That F. F. late of the parish, &c. on, &c. and long before, was constable of the said parish of, &c. and that divers trespasses, offences, ill-deeds, and misdemeanors, presentable by the said F. F. as such constable as aforesaid, on the said, &c. and on divers other days and times during the time the said F. F. was so constable of the said parish of R. as aforesaid, against the peace of our said lord the king, were done and committed within the said parish of R. to wit, at, &c. aforesaid, yet that the said F. F. well knowing the same, but not regarding the duty of his said office, on, &c. aforesaid, at, &c. aforesaid,

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(*a*) See form, Cro. C. C. 7th ed. 295. Stark, 2d ed. 602. 604. See ante, 257, 8, n. (*a*).
(*b*) See form, Cro. C. C. 8th ed. 151. In a form in 2 Stark.

2d ed. 606, it is not alleged that any offences had been committed. See ante, 257, 8, note (*a*).

unlawfully and contemptuously did neglect and refuse to make and return to the honorable H. B. esquire, one of the justices of our said lord the king, of his court of Common Pleas, at Westminster, and W. N. esquire, one other of the justices of our said lord the king, of the same court, and others their fellows, justices of our said lord the king, of oyer and terminer, at the assizes and general sessions of oyer and terminer of our said lord the king, then and there holden before the said justices for the said county, by virtue of his majesty's letters patent to them for that purpose directed, an account, in writing, of those trespasses, offences, ill-deeds, and misdemeanors, and of all other articles and things by him presentable as such constable as aforesaid, and which return he the said F. F. was, by virtue of his office aforesaid, and by the laws and customs of this realm, obliged (or "bound,") to have made to the said justices at the assizes and general session of oyer and terminer aforesaid, to the great hindrance of justice, in contempt, &c. and against the peace, &c.

That C. R. late of the liberty, &c. on, &c. and long before, being constable of the liberty aforesaid, in the county aforesaid, and then well knowing a certain part of the king's common and ancient highway, called, &c. used for all the subjects of our said lord the king and his ancestors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour, at their will, and lying within the liberty aforesaid, containing in length twenty yards, and in breadth eight yards, then and long before to have been very ruinous, miry, deep, broken, and in great decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by, through, and along the same way, with their horses, coaches, carts, and carriages, had not been able, nor then were able to go, return, pass, ride, and labour, without great danger of their lives, and loss of their goods; nevertheless the said C. R. afterwards, to wit, on the said, &c. at, &c. aforesaid, at the assizes and general session of oyer and terminer, then and there holden for the county aforesaid, before certain justices of our said lord the king, duly assigned to hold the same, unlawfully and contemptuously, did neglect to make and return a presentment against the inhabitants of the liberty aforesaid, in the

Against a constable for not presenting the inhabitants of a parish for not repairing a highway (a).

(a) Cro. C. C. 7th ed. 283. Ante, 257, 8, note (a).

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county aforesaid, for not repairing and amending the said king's common and ancient highway, as he the said C. R. ought to have done, and of right did belong to him to do, to the great hindrance of justice, to the evil example, &c. and against the peace, &c.

Against a constable for neglecting to execute a justice's warrant for the apprehension of two persons (*a*).

That heretofore, to wit, on, &c. H. A. esquire, then and still being one of the justices assigned, &c. [*as ante*, 182,] did make a certain warrant in writing, under his hand and seal, bearing date, on, &c. directed to the constables of the township of C. in the county of C., thereby in his majesty's name charging and commanding the said constables, that, &c. [*here set forth the warrant*] which said warrant, afterwards, to wit, on, &c. at, &c. aforesaid, was duly indorsed for execution, by and in the name of G. H. esq. then being mayor, and one of his majesty's justices of the peace, in and for the borough of C. in the said county of C., and which said warrant so indorsed, afterwards, to wit, on, &c. last aforesaid, in the county aforesaid, was delivered to J. C. late of, &c. then and still being one of the constables of the said township of C. in the county aforesaid, in due form of law to be executed, and the said J. C. was then and there required to execute the same, by bringing the bodies of the said T. J. W. and T. B. before the said H. A. at the time and place, and for the purpose in the said warrant mentioned. And the jurors, &c. do further present, that although the said J. C. could and might and ought to have executed the said warrant accordingly; yet the said J. C. so being constable of the said township of C. in the county of — aforesaid, not regarding the duty of his said office, did not, nor would execute the said warrant as aforesaid, or otherwise, howsoever, but unlawfully, wilfully, obstinately, and contemptuously neglected and refused so to do, and therein failed and made default, to the great hindrance of public justice, in contempt, &c. to the evil, &c. and against the peace, &c.

Against the bailiff of Ivelchester, for wilfully absenting himself on the election of a bailiff (*b*).

That the borough of Ivelchester, in the county of Somerset, is an ancient borough, and that by certain letters patent, under the great seal of England, bearing date at Westminster, the 11th day of December, in the third and fourth years of the

(*a*) See *ante*, 257, 8, n. (*a*).

(*b*) On 11 Geo. 1. c. 4. s. 6.
3 East, 372. *Ante*, 257, 8, n. (*a*).

This indictment was settled by an eminent pleader at the bar.

reign of our late sovereign lord and lady, Philip and Mary, the said king and queen did, for themselves, &c. [*here set forth the letters patent, or charter, see 5 East, 373.*] And the jurors, &c. do further present, that J. C. late of, &c. on, &c. was, and from thence continually, until and upon the Monday next before the feast of St. Michael the Archangel, in the forty-third year aforesaid, and afterwards, was bailiff and chief officer of the borough aforesaid, and that the greater part of the then capital burgesses, and counsellors of the borough aforesaid, on Monday next, before the feast of St. Michael the Archangel, aforesaid, in the forty-third year aforesaid, assembled and met together at the Guildhall of and within the borough aforesaid, the same being the usual and proper place for that purpose, in order to chuse and nominate one of themselves to be bailiff of the borough aforesaid, for one whole year then next ensuing, and it was then and there the duty of the said J. C. as such bailiff and chief officer as aforesaid, to attend and be present at such election, nevertheless the said J. C. not regarding his duty in that behalf, nor the statute in that case made and provided, upon the said, &c. the same so being the day appointed by the said charter for such election as aforesaid, unlawfully, wilfully, and voluntarily did absent himself from the said assembly or meeting, so holden for the purpose of such election as aforesaid, of a bailiff of the borough aforesaid, and from such or any other election of the said officer, contrary to the form of the statute in such case made and provided, in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said borough of I. aforesaid, so being an ancient borough as aforesaid, and the said letters patent having been so made as aforesaid, from the time of granting the said letters patent, hitherto, there hath been and still is a certain ancient and laudable custom used and approved of, within the said borough, that the bailiff of the same borough for the time being, should, and of right ought, and still of right ought to attend and be present, on, &c. in each and every year, in the Guildhall of the same borough, at a meeting of the capital burgesses and counsellors of the same borough for the time being, or the greater part of them, in order that the same capital burgesses and counsellors, or the greater part of them, in pursuance of the said charter, might chuse and nominate one of themselves to be bailiff of the borough aforesaid for one whole year, then next ensuing, and that such succeeding bailiff might be duly invested with the said

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Second count.

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Third count.

office. And the jurors aforesaid, on their oath aforesaid, do further present, that the said J. C. so being such bailiff and chief officer as aforesaid, the greater part of the then capital burgesses and counsellors of the borough aforesaid, on, &c. assembled, and met together at the Guildhall, of and within the borough aforesaid, the same being the usual and proper place for that purpose, in order to chuse and nominate one of themselves a bailiff of the borough aforesaid, for one whole year thence next ensuing, according to the aforesaid charter in that behalf, and it was then and there the duty of the said J. C. as such bailiff, and chief officer as aforesaid, to attend and be present at the said assembly and meeting, nevertheless the said J. C. not regarding his duty in that behalf, nor the statute in that case made and provided, upon the said, &c. the same so being the day appointed by the said charter for such election as aforesaid, unlawfully and voluntarily absented himself from the said assembly or meeting, and from such election as last aforesaid, contrary to the form, &c. [*as in first count.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said borough of l. so being an ancient borough as aforesaid, and the said letters patent having been so made as aforesaid, and the said J. C. so being such bailiff as aforesaid, upon the Monday next before the feast of St. Michael the Archangel, in the forty-third year of the reign of our lord the now king aforesaid, the same being the day appointed by the said charter for the election of a bailiff of the said borough, with force and arms, at, &c. aforesaid, he the said J. C. did knowingly and designedly prevent and hinder the election of a bailiff of and for the borough aforesaid, contrary to the form, &c. in contempt, &c. and against the peace, &c.

Against a constable for not attending at an election for a burgess to serve in parliament after being summoned by the high bailiff for that purpose.

That J. P., late of, &c. before and on, &c. was and from thence hitherto hath been and still is a constable and peace officer of our said lord the king, within and for the town and borough of S. in the county aforesaid. And the jurors, &c. do further present, that on, &c. aforesaid, at, &c. aforesaid, in the town and borough aforesaid, Sir W. L. knight, then and still being high bailiff of the said town and borough, had received a precept from the sheriff of the said county of S. requiring him, the said high bailiff, to cause to be elected one other fit and discreet burgess of the said borough, in the place of A. B. esq. whose then late election had by the lower house of parliament been declared void, to be and appear at the

parliament then holden at Westminster, to do and consent to those things which in the said parliament should happen to be so ordained, and that in obedience to the said precept, the said Sir W. L. so being such high bailiff as aforesaid, did then and there appoint Friday, the 18th of, &c. then next, at ten of the clock in the forenoon of the same day, at a certain place called St. Margaret's Hill, in the town and borough aforesaid, to read and publish the same precept, and then to proceed to such election, whereof the said J. P. so being such constable and peace officer as aforesaid, afterwards, to wit, on the said, &c. at, &c. aforesaid, had notice, and the said J. P. was then and there duly requested and enjoined personally to attend with his constable's staff on the occasion aforesaid, at the said place, called, &c. within the said town and borough, on, &c. aforesaid, and also personally to attend from day to day, and every day during the continuance of the said poll, at the said election, with his said constable's staff. And the jurors, &c. do further present, that in pursuance of the said appointment so made as aforesaid, and in obedience to the said precept, the said Sir W. L. so being such high bailiff as aforesaid, by F. T. gent. his deputy bailiff, in that behalf did afterwards, to wit, on, &c. then next, at ten of the clock then next, in the forenoon, attend at the said place called, &c. in the said town and borough, and did then and there read and publish the said precept, and proceed to such election as aforesaid, and a poll being then and there demanded at the said election, the same continued on that day, and on Monday and Tuesday, the 21st and 22d days of November following, at a certain place called, &c. in the town and borough aforesaid, and it was thereupon by means and on occasion of the several premises aforesaid, the duty of the said J. P. as such constable and peace officer as aforesaid, to have attended with his said constable's staff on each and every of those several days, at the said place called, &c. within the town and borough aforesaid, during the continuance of the poll at the said election, to keep the peace of our said lord the king within the said town and borough; nevertheless the said J. P. so being such constable and peace officer as aforesaid, and well knowing all and singular the premises aforesaid, but not regarding such duty as such constable and peace officer, did not nor would attend with his constable's staff on each or every or any of the said several days aforesaid at the place called, &c. within the town and borough aforesaid, during the continuance of the said poll, at

the said election for the purpose aforesaid, but unlawfully, wilfully, and obstinately, and contumaciously neglected and omitted so to do, in contempt, &c. to the evil example, &c. and against the peace, &c.

AGAINST MINISTERIAL OFFICERS FOR NOT ACCEPTING OFFICE, &c.

Against a constable or headborough, for not taking upon him the office, he being elected there to in due form under a custom (a).

That our said sovereign lord the king and his predecessors, from time whereof the memory of man is not to the contrary, have had and held, and have been accustomed to have and hold a court of view of frank pledge, once in every year, before the sheriff of the county of M. for the time being, in the torn of the sheriff of M. when made through the hundred of O. in the county of M., within the month after Easter in every

(a) See similar precedents, 4 Wentw. 332. 351, and other precedents, 4 T. R. 778. Doug. 531. Cowp. 13. Cro. C. C. 145 to 154. Burn, J. Constable. Stark. 592 to 600. *The offence.* An indictment lies against a person elected to the office of high or petty constable, for refusing to execute its duties, 2 Stra. 920. So also against overseers for not taking upon themselves that office, 1 Stra. 101, and on the same principle, all other ministerial offices which the party is liable to exercise, 4 T. R. 778. The defendant may, however, in many cases, show ground of exemption by which his liability is overthrown. Thus it has been holden, that a college barber, though he does not reside within the university, but keeps a shop within the city of Oxford is privileged from serving the office of constable, Doug. 538. So an officer of the customs is exempted from acting as overseer of the poor,

though he has not obtained his writ of privilege at the time of trial, for it is enough to justify him, if he be in a condition to demand it, 8 T. R. 375. But one who is a resident within a private lect which is within the hundred, is not, therefore, exempted from serving the office of constable of the hundred, and a custom to elect persons thus situated to that office is valid, Cowp. 13. And it is laid down, that the inspector of lottery offices appointed by commissioners is not exempted from becoming constable, because that is an office which may be discharged by deputy, 1 Esp. Rep. 359. There is one general ground of excuse from executing any parish or ward offices, by the certificate of a judge, or Tyburn ticket, to be given to any person who apprehends and prosecutes to conviction any offenders against the statutes, 10 & 11 W. 3. c. 23, and 5 Ann. c. 31, which operates as such an indemnity

year, and at the same court, when holden, there now is and from time whereof, &c. hath been a certain ancient and laud-

in the parish where the felony was committed; and before it has been used for this purpose, it may be once transferred by sale or otherwise, and will protect the assignee in the same way as if he were the original possessor, 4 Bla. Com. 295, note 2, see ante, vol. i. Index, tit. Tyburn Ticket. Another exemption has been made in favour of protestant dissenting teachers duly registered according to the provisions of the act of toleration. By that statute (1 W. & M. c. 18. s. 11,) it is enacted, "that every teacher or preacher in holy orders or pretended holy orders of a congregation, that should take the oaths therein required, and make and subscribe the declaration therein mentioned, and also subscribe such of the articles of the Church of England as are required by that act, in manner therein specified, shall be thenceforth exempt from serving upon any jury, or from being chosen or appointed to bear the office of church-warden or overseer of the poor, or any other parochial or ward office, or any other office in any hundred of any shire, city, town, parish, division, or wapentake." The necessity for subscribing any part of the articles of the Church of England mentioned in this clause, has been recently done away with, by 52 Geo. 3. c. 155. s. 9. It should seem also, that the exercise of any office which is entirely incompatible with that to which the party is elected, will of itself excuse him without any express provision for that purpose, 8 T. R. 378. 1 Esp. Rep. 360. 1 Lev. 265.

The 33 Geo. 3. c. 55. s. 1, gives power to two justices at petty sessions to punish constables, and peace and parish officers in a summary manner for neglect of duty. *The indictment.* It is essential to show that the defendant was bound to undertake the office, by setting forth how he was elected; and therefore, an indictment stating that the defendant being qualified to act as constable was *debite modo electus*, and that he had notice thereof, but did not take the oath required on executing the office, was held to be invalid, 5 Mod. 96. Comb. 328. 4 T. R. 778. 1 Vent. 395. 2 Stra. 1268. The indictment should shew that the defendant was an inhabitant, &c. at the time he was chosen, and where the indictment alleged that defendant was elected constable at an adjourned court-leet, omitting to state he was then an inhabitant, it was held defective, Keny. Rep. 318. The custom, if the election be founded on a custom, should be truly laid in the indictment, and proved as it is stated, Doug. 531. If in an indictment against an overseer for not taking upon himself that office, it be stated that the defendant was nominated and appointed overseer for one year then next ensuing, the allegation will suffice, for the court will presume the overseer's year to be intended, 4 T. R. 778. 1 Stra. 101. An allegation that the defendant had due notice of his being chosen, &c. is not sufficient, Alleyn, 78. 5 Mod. 96. Comb. 328. 5 Mod. 127. Id. Raym. 68. S. C. 2 Hawk. P. C. 64.

able custom there used and approved of, to wit, that certain inhabitants and residents within the said hundred, were then and there sworn to charge and inquire of, and present those things that belonged to them in that court to present, which said jurors so sworn and charged do also at that court chuse and present, and during all the time aforesaid have chosen and presented, and have been used and accustomed, and of right ought to chuse and present two proper persons of the inhabitants and residents of the parish of St. George the Martyr, within the hundred aforesaid, in the county aforesaid, to be headborough within and for the said parish for the year then ensuing, and until other inhabitants and residents of the said parish have been and are chosen and sworn into the said office for the preserving of the peace of our said lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons within the said parish, and for the doing of all other matters relating to the said office of headborough, and that from time immemorial aforesaid, there was and yet is an ancient custom used and approved at the said court, that the said persons so chosen and presented should have notice given to them of such their said election, and be summoned to appear in the said court upon such notice and summons, and then and there take their corporal oath for the due execution of their said office, and to execute the same. And the jurors aforesaid, now here sworn, &c. further present, that at a court of view of frank pledge of our said lord the king, holden before S.F. esq. and J.S. esq., then and yet sheriffs of the county aforesaid, in the torn of the said sheriffs, through the hundred of O.

c. 10. s. 46. Keny. Rep. 318; for if the person chosen be present in court, the steward may swear him into office, but if he does not appear before the court is ended, the steward cannot swear him, but must summon him in convenient time to take the oath of office before a justice, and this must be specially shewn in the indictment, 1 Keny. Rep. 318, 319. An indictment against a headborough for not taking the oath on admission to his office, must state, that he was sum-

moned before a justice of the peace so to do, or it will be quashed, Alleyn, 78. It should seem, it must be shewn that the court at which defendant was chosen was within the jurisdiction of the court, Hob. 56. 9 Co. 51. 2 Keb. 415, pl. 43. 5 Mod. 96. Vaugh. 129. 1 Keny. Rep. 318. The prosecutor must produce and prove the appointment to the office, and parol evidence is not admissible, 1 Stra. 101. Ante, 259, note (a).

aforesaid, in the county aforesaid (a), within the month after Easter, in the year of our Lord 1755, to wit, on, &c. to wit, at, &c. within the hundred of O. aforesaid, in the county aforesaid, W. G., W. B., [*here follow the names of thirty jurors*] good and lawful men inhabiting and residing within the hundred aforesaid, were then and there sworn and charged, according to the custom of the said court, to inquire of and present those things that belonged to them in that court to present; and the same jurors at the said court so sworn and charged according to the custom of the said court, did chuse and present M. D. of the parish of Saint George the Martyr aforesaid, in the county aforesaid, yeoman, then being one of the inhabitants and residents within the same last-mentioned parish, to be one of the headboroughs within and for the said last-mentioned parish, and to execute that office for the year then ensuing, and until another inhabitant and resident of the said parish last-mentioned, should be chosen and sworn into that office in the place and stead of the said M. D. for the preserving of the peace of our said lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons within the same parish, and for doing and performing of all matters relating to the said office of headborough, (he the said M. D. then and there long before and ever since being an inhabitant and resident within the same parish, and a fit and proper person to execute the said office as aforesaid (b),) and that he the said M. D. after his being so chosen into the said office, to wit, on the same, &c. aforesaid, at, &c. aforesaid, had notice thereof, and by a certain summons in writing was required personally to be and appear in the said court on the said, &c. aforesaid, and then and there take his corporal oath for the due execution of the said office, and to execute the same; which summons afterwards, to wit, on the same, &c. at, &c. aforesaid, was delivered to and left with the said M. D.; nevertheless the said M. D. not regarding his duty in this behalf, but intending and endeavouring the due execution of the said office totally to neglect and omit, after his being so chosen into the said office, and after such notice and summons as aforesaid, to wit, on the said, &c. aforesaid, did obstinately refuse to appear in the said court, and

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(a) *Quere* if it should not pl. 43. 5 Mod. 96. Vaugh. be shewn the court was held 189. 1 Keny. Rep. 318. within the jurisdiction, Hob. (b) See note, ante, 267. 56, 59. Co. 51, 2. Keb. 415, Kenyon's Reports, 318.

Third count,
more general than
first, stating de-
fendant's election
at sheriff's torn.

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to take upon himself the said office, and to take the oath for the execution thereof, and he the said M. D. voluntarily, unlawfully, obstinately, and contemptuously hath hitherto refused and still doth refuse to be sworn into and execute the same office, to wit, at, &c. aforesaid, to the great hindrance and delay of justice, to the evil example, &c. and against the peace, &c. [*Second count like the first, only stating the court to be a court-leet, see 4 Wentw. 334.*] And the jurors aforesaid, upon their oath aforesaid, further present, that the said M. D. on the said, &c. and long before, was and still is a resiant and inhabitant within the parish of, &c. aforesaid, in the county aforesaid, and then and there was and still is a fit and proper person to execute the office of one of the headboroughs within the said parish of, &c. and that he the said M. D. at a court of our said lord the king, holden on, &c. before N. F. esq. and J. S. esq. then and yet sheriff of the county aforesaid, in the torn of the said sheriff, in the hundred of O. in the county aforesaid, in the workhouse there, he the said M. D. was duly elected and chosen by W. G. &c. [*naming the jurors*] good and lawful men of the hundred aforesaid, then and there sworn and charged to inquire of, and present those things that belonged to them in that court to present, into the office of one of the headboroughs within and for the said parish of Saint George the Martyr, and to execute that office for the year then next ensuing, and until another inhabitant and resident of the same last-mentioned parish should be chosen and sworn into that office, in the place and stead of the said M. D. and that he the said M. D. afterwards, to wit, on the said, &c. aforesaid, at, &c. aforesaid, had notice thereof, and was then and there required to appear at the said last-mentioned court to take upon himself the said office, and to take the oath for the due execution thereof, nevertheless the said M. D. his duty in that behalf not regarding, but contriving and intending wholly to neglect to serve the said office of headborough, after he was so as last aforesaid elected and chosen into the said office, afterwards, to wit, on the said, &c. and continually afterwards until the day of taking this inquisition, at, &c. aforesaid, unlawfully and contemptuously did refuse and still doth refuse to take the oath for the due execution of the said office, or in anywise to execute the same, to the great hindrance of justice, to the evil example, &c. and against the peace, &c. And the jurors aforesaid, now here sworn, upon their oaths aforesaid, further present, that the said M. D. on the said, &c. and long before,

Fourth count
states election
at court leet.

was and yet is a person able and fit to be chosen into the office of one of the headboroughs of the same parish to execute that office ; and that the said M. D. on the same day and year aforesaid, at a certain court leet of our said lord the king, holden at, &c. aforesaid, to wit, in the workhouse there, before the said J. B. then and yet steward of the said court, was duly and lawfully chosen to be one of the headboroughs of the said parish of Saint George the Martyr, for the year then ensuing, and until another inhabitant and resiant of the same parish was chosen and sworn into that office, in the place and stead of the said M. D. whereof the said M. D. afterwards, to wit, on the same day and year last aforesaid, at the parish of Saint George the Martyr aforesaid, in the county aforesaid, had due notice, nevertheless the same M. D. on the same day and year last aforesaid, and continually afterwards until the day of taking this inquisition, at the parish of Saint George the Martyr aforesaid, in the county aforesaid, wilfully, obstinately, and contemptuously did neglect and refuse, and yet doth neglect and refuse, to take upon himself the execution of the said office, although duly required so to do, to the great hindrance of justice, to the evil example, &c. and against the peace, &c. And the jurors aforesaid, now here sworn upon their oath aforesaid, further present that the said M. D. on the said, &c. and long before was and yet is an inhabitant and resiant in the parish of Saint George the Martyr aforesaid, in the county aforesaid, and on the same day and year last aforesaid, and long before was, and yet is a person able and fit to be chosen into the office of one of the headboroughs of the same parish, and to execute that office, and that he the said M. D. on, &c. last aforesaid, at, &c. aforesaid, in the county aforesaid, was duly and lawfully chosen to be one of the headboroughs of the said parish of, &c. for the year ensuing, and until another inhabitant and resiant of the same parish was chosen and sworn into that office in the place and stead of the said M. D., whereof the said M. D. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, had due notice, nevertheless the said M. D. on the same day and year last aforesaid, and continually afterwards, until the day and year of taking this inquisition at, &c. aforesaid, wilfully, obstinately, and contemptuously did neglect and refuse, and yet doth neglect and refuse to take upon himself the execution of the said office,

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Fifth count, stating generally that defendant, was chosen head-borough, not shewing how (a).

(a) *Quere* as to this count, ante, 267, 3, note (a).

although duly required so to do, to the great hindrance of justice, to the evil example, &c. and against the peace, &c.

Indictment for not taking the office of constable (a).

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That A.O. late of, &c. in the township of —, in the said county, yeoman, on, &c. and long before, and always after, until the day of the preferring of this indictment, was and is an inhabitant, and residing within the township of — aforesaid, in the county aforesaid, and an able person to serve the office of constable for the said township; and he the said A.O., on the said, &c. in the township aforesaid, at the court-leet of A.L. lord of the manor of — aforesaid, holden before A.S. gentleman, steward of the said court, was elected and chosen, according to the ancient custom of chusing constables for the said township, for one year from thence next following, to do and execute all and singular those things which belong to the office of constable, (or otherwise as the custom shall be for chusing constables:) and that the said A.O. afterwards, to wit, on, &c. aforesaid, at the township of — aforesaid, had due notice given to him by A.B. bailiff of the aforesaid manor, of his being so elected and chosen constable as aforesaid, and then and there was by him the said A.B. required to appear before J.P. esquire, then and yet one of his majesty's justices assigned, &c. [*as ante*, 182] on the said, &c. to take his oath for the due execution of the said office of constable for the same township, according to the duty of that office; nevertheless the said A.O., his duty in that behalf not regarding, but contriving and intending wholly to neglect to serve the said office of constable, after he the said A.O. was so elected and chosen into the said office as aforesaid, to wit, on the said, &c. and continually afterwards until the day of taking this inquisition, at, &c. aforesaid, unlawfully and contemptuously did refuse, and still doth refuse, to take his said oath for the due executing the said office of constable, and in anywise to execute the same office, contrary, &c. [*as in the last precedent.*]

For refusing to take the oath of petty constable, and to execute that office to which he had

That R.K. late of, &c. on, &c. and long before, was an inhabitant and resiant within the parish aforesaid, in the county aforesaid, and an able person to serve the office of petty constable for the same parish, and he the said R.K., on the

(a) See precedent, Burn, J. Constable, and see ante, 266, note (a).

said, &c. at the vestry-room of and in the parish church of the same parish, there situate, lawfully and in due manner was elected and chosen by J.W., A. G., P. D., J. L., and H. G. ancient inhabitants of the same parish, and usually present at the election of parish officers, for the parish aforesaid, into the office of petty constable for the said parish of Saint Giles in the Fields, in the said county of M., for one year from thence next following, to do and execute all and singular those things which belong to the office of constable, and that the said R.K. afterwards, to wit, on, &c. at, &c. aforesaid, had due notice thereof, and then and there was required to appear before J.M. esq., then, and yet being one of the justices of our said lord the king, assigned, &c. [*as ante*, 182] on the same, &c. to take his oath for the due execution of the said office of petty constable of the same parish according to the duty of that office; nevertheless the said R.K., his duty in that behalf not regarding, but contriving and intending wholly to neglect to serve the said office of petty constable, after he the said R.K. was so elected and chosen into the said office as aforesaid, to wit, on the said first day of November in the year aforesaid, and continually afterwards, until the day of the taking of this inquisition at the parish aforesaid, in the county aforesaid, unlawfully and contemptuously did refuse, and still doth refuse to take his said oath for the due execution of the same office of petty constable, or in any wise to execute the same office, to the great hindrance of justice, in contempt, &c. to the evil example, &c. against the peace, &c.

been appointed at a vestry (a).

That on, &c. at a court-leet of the right honorable T. lord A. lord of the manor of B.* in the said county of W., then held in and for the said manor of B., before R. S. gentleman, then being steward of the said court, of the said lord A., lord of the said manor, J.D. late of, &c. within the manor aforesaid, in the county aforesaid, baker, according to the custom of the said manor, was duly nominated and elected by J. R., &c. [*the names of the jurors*] the jury then and there duly sworn at the said court-leet, as well for our said lord the king, as for the said lord of the said manor, according to the custom of the said manor, one of the constables of the said manor of B., for

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For refusing to take the oath of constable of a manor, to which office he was duly elected at a court leet. First count, for refusing to be sworn before a justice after a certificate from the steward to the justice, and a summons in pursuance thereof (b).

(a) See precedent, Cro. C. C. 7th edit. 299. see also ante, 266, note (a).

(b) See Cro.C.C. 8th ed. 152. Cro. C. A. 65. 1 Salk. 502, ante, 266, note (a).

the year then next ensuing, (he the said J. D. then being an inhabitant and resident of and within the said manor, and a fit person to be so nominated and elected, and a person liable to be nominated and elected to the said office,) to wit, at, &c.; and that afterwards, to wit, on the same, &c. at the parish aforesaid, in the manor and county aforesaid, the said J. D. had notice from the said R. S. as being so steward as aforesaid, of such his nomination and election as aforesaid; and that afterwards, to wit, on, &c. at, &c. aforesaid, in the manor and county aforesaid, the said R. S. then being such steward as aforesaid, did certify under his hand and seal to G. P. esq., then being one of the justices of our said lord the king, assigned, &c. [as ante, 182] that the said G. D. had, according to the custom of the said manor, been appointed at a court-leet, held in and for the said manor of B., on the said, &c. constable of the said manor of B., whereupon the said G. P. the justice aforesaid, afterwards, to wit, on the said, &c. at, &c. aforesaid, did make and issue a certain summons under his hand and seal, directed to the constable and headborough of B. aforesaid, for that time being, thereby requiring them, and each of them, forthwith to summon the said J. D. to appear before him the said G. P. being such justice as aforesaid, at the house of J. C. in B. aforesaid, on, &c. by three of the clock in the afternoon of the same day, to take the oath of office of constable for the said manor of B., so being nominated and elected for and to that office as aforesaid; and the jurors, &c. do further present, that the said J. D. afterwards, to wit, on the said, &c. at, &c. aforesaid, was duly summoned by R. B. then being constable of the manor of B. aforesaid, to appear before the said G. P. being such justice as aforesaid, at the house of the said J. C., in B. aforesaid, on, &c. aforesaid, by three of the clock in the afternoon of that day, to take the oath of office

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constable, of and for the said manor of B., for the year next ensuing, and to take upon him the said office of constable, contrary to his duty in that behalf, in contempt, &c. to the great hindrance of justice, and against the peace, &c. And the jurors, &c. do further present, that on, &c. at another court-leet of the said right honorable T. lord A., lord of the manor of B., aforesaid, in the county aforesaid, then held in and for the said manor of B. before the said R.S., then being steward of the said court of the said lord A., lord of the said manor, the said J. B. according to the custom of the said manor, was duly nominated and elected by the said J. R., &c. [*the names of the jurors*] the jury then and there duly sworn, at the said last-mentioned court-leet, as well for our said lord the king as for the said lord of the said manor, according to the custom of the said manor, one of the constables of the said manor of B., for the year then next ensuing, (he the said J. D. then and there being an inhabitant and resident of, and within the said manor, and being a fit person to be nominated and elected, and a person liable to be nominated and elected to the said office,) and that afterwards, to wit, on the same, &c. last aforesaid, at, &c. aforesaid, the said J. D. had notice from the said R.S., so being steward as aforesaid, of such his nomination and election as last aforesaid; and that afterwards, to wit, on the same, &c. last aforesaid, at, &c. aforesaid, in, &c. aforesaid, the said J. D. then being personally present in the said last-mentioned court, was required by the said R.S., then being steward as aforesaid, then and there to be sworn into, and take upon himself the said office of constable, in and for the said manor, according to such his nomination and election as last aforesaid; yet the said J. D. then and there, to wit, on the said, &c. aforesaid, at, &c. aforesaid, unlawfully, wilfully, and obstinately, did neglect and refuse to be sworn into, or in any wise to take upon himself the said office of constable, in and for the said manor, to which he had been so nominated and elected as last aforesaid, and hath hitherto wholly neglected and refused so to do, contrary, &c. [*as in first count.*]

Second count, leaving out the certificate, summons, and every thing relating to the justice (a).

That at the general quarter session of the peace of our said lord the king, holden at the new sessions' house on Clerken-

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Indictment for refusing to execute the office of

(a) See ante, 266, n. (a).

chief constable of a hundred to which he was elected at a session holden on Clerkenwell Green (a).

well-green, in and for the county of Middlesex by adjournment, on Thursday, the ninth day of October, in the twenty-first year, &c. before W. M., J. S., W. A., D.W. esquires, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] one W. B. late of, &c. then and long before, being an inhabitant, and residing in the parish aforesaid, within the hundred of O., in the said county of M., and a proper person to execute the office of chief constable, within the said hundred at the same session, by the justices above named, in due manner was elected to be one of the chief constables of the hundred aforesaid, in the room and stead of one J. B., whereof the said W. B. afterwards, to wit, on, &c. at, &c. aforesaid, had notice: nevertheless the said W. B., his duty in that behalf not regarding, but contriving and intending as much as in him lay to prevent and hinder the due execution of justice, on the said, &c. at, &c. aforesaid, unlawfully, wilfully, obstinately, and contemptuously did refuse, and from thence continually until the day of taking this inquisition, unlawfully, wilfully, obstinately and contemptuously, hath refused to take upon himself, and execute the said office of chief constable, within the hundred aforesaid, to wit, at, &c. aforesaid, contrary to his duty in that behalf, in manifest contempt and delay of justice, to the evil example, &c. and against the peace, &c.

Indictment against a person for refusing to take the oath of constable of the ward of Farringdon Within, after having been elected at a wardmote (b).

First count, stating that a court of wardmote was held according to the custom of the city, and that the defendant was chosen and refused, &c.

That the city of London is an ancient city, and that F. de M. late of, &c. on, &c. and long before and continually afterwards, until the day of the taking of this inquisition, was an inhabitant and resiant within the parish of C. C. in the ward of Farringdon Within, in London aforesaid, and a fit and proper person to execute the office of constable within the said ward, and that according to the custom of the said city, a court of wardmote was holden, in and for the said ward, to wit, in, &c. aforesaid, in London aforesaid, on, &c. before J. P. esquire, then being the lawful deputy of W. B. esquire, then and now being one of the aldermen of the said city, and then and yet alderman of the said ward, and that the said court of ward-

(a) See precedent, Cro. C. C. 8th edit. 145. 7th edit. 296. *Ante*, 266, note.(a).

(b) See precedent, Cro. C. C. 8th ed. 147. Cro. C. A. 55.

Stark. 2d ed. 619. *Ante*, 266, n. (a). It should seem better to begin the indictment with the second count, as being the most particular.

mote was in due manner continued by several adjournments until, &c. to wit, at, &c. aforesaid; and that, on the said, &c. at, &c. aforesaid, at the same court of wardmote, then and there duly holden by adjournment, before the said J. P., the deputy aforesaid, he the said F. de M. was lawfully and in due manner, according to the custom of the said city, and in the court of wardmote aforesaid, then and there elected and chosen to be one of the constables within and for the said ward, for one whole year from thence next ensuing, by the men inhabiting and resiant paying scot and bearing lot within the said ward, whereof the said F. de M. afterwards, to wit, on the said, &c. and on divers other days and times between that day and the day of the taking of this inquisition at, &c. aforesaid, had due notice; yet the said F. de M., not regarding his duty in this behalf, but endeavouring and intending, as much as in him lay, to hinder and retard the due execution of justice on the said, &c. and continually from thence until the day of the taking this inquisition at, &c. aforesaid, voluntarily and obstinately, wholly refused, denied and neglected, and yet doth refuse, deny, and neglect to take upon himself, and execute the said office of constable, contrary to his duty in that behalf, in manifest contempt and delay of justice, to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said F. de M. on the said, &c. and long before, and continually from thence, until the day of the taking of this inquisition, was an inhabitant and resiant, paying scot and bearing lot within the said parish of C. C. in the said ward of Farringdon Within, in London aforesaid, to wit, at, &c. aforesaid, and that within the same ward there is, and from time whereof the memory of man is not to the contrary, there hath been, a certain court of our said lord the now king and his predecessors, kings and queens of England, called the wardmote, held, and to be held every year, upon the feast day of St. Thomas the Apostle, (unless the same feast should happen to be on a Sunday, and in such case then upon the day next following such Sunday,) before the alderman of the ward aforesaid, for the time being, or his deputy, in which said court of wardmote, according to the custom within the said ward used and approved of during the time last aforesaid, to wit, in, &c. aforesaid, all the men, inhabitants and resiants, paying scot and bearing lot within the ward aforesaid, for the time being, have been used and accustomed, and ought and were bound by reason of their residence to appear in the said court and do their suit there, and in the said court of ward-

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Second count, stating the custom at length, to hold a court, &c. and that the defendant was chosen for the ward.

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mote, according to the custom of the said ward, the said men inhabiting and resiant, paying scot and bearing lot within the same ward for the time being, were, during the whole time aforesaid, used and accustomed, and ought to appoint and chuse yearly divers persons then inhabiting and resiant, and paying scot and bearing lot, within the ward aforesaid, constables to and for the said ward, for the preserving of the peace of our lord the king, and for the apprehending of rogues, vagabonds, and other suspicious persons within the ward aforesaid, for the public good, which said persons, so as aforesaid appointed and chosen, were used and accustomed and ought to hold the said office for the year then next ensuing, and until other persons should be elected into the said office, and also were used and accustomed, and ought, on the Monday next after the feast of the Epiphany, next after their said election, to appear at the Guildhall of the said city of L. situate, &c. in the court then and there held, before the mayor and aldermen of the same city for the time being, for all the time aforesaid, and take their corporal oaths before such mayor and aldermen, for the due execution of the said office of constable. And the jurors, &c. do further present, that according to the custom of the city and ward aforesaid, a court of wardmote was holden for the said ward of Farringdon Within, to wit, in the said parish of C. C. in the said ward, on the said, &c. before the said J. P. then being the lawful deputy of the said W. B. esq. then and now being one of the aldermen of the said city, and then and yet alderman of the said ward, and that the said court of wardmote was in due manner continued by several adjournments until, &c. and that at the same court of wardmote being duly holden by adjournment on the said, &c. within the said parish of C. C. in, &c. aforesaid, before the said J. P. the deputy aforesaid, the said F. de M. was lawfully and in due manner by the then inhabitants and resiants paying scot and bearing lot within the ward aforesaid, according to the custom of the said ward, and the court of wardmote aforesaid, for and during all the said time, immemorially used and approved of, elected into the office of one of the constables in and for the said ward, for one whole year then next ensuing, and until another person should be elected to the said office for preserving the peace of our said lord the king, and for the apprehending of rogues, vagabonds and other suspicious persons within the said ward for the public good, whereof the said F. de M. afterwards, to wit, on the said, &c. at, &c. aforesaid, had due

notice from A. B., gentleman, then and there being vestry clerk of the said parish of C. C. and then and there was duly required to appear amongst others in the said court to be holden before the then mayor and aldermen of the said city of L. at the Guildhall of the same city, on Monday next, after the feast of the Epiphany then next following, there to take his corporal oath for the due execution of his said office, and to execute his said office, yet the said F. de M. not regarding his duty in that behalf, but intending and endeavouring wholly to neglect and omit the due execution of his said office, on the said Monday next, after the feast of the Epiphany, and continually afterwards until the day of the taking of this inquisition, (although often duly requested so to do, to wit, at, &c. aforesaid,) hath altogether, voluntarily, obstinately and contemptuously refused and denied, and yet doth refuse and deny, to take his said oath, for the due execution of his said office, or to execute his said office, in any manner whatsoever, contrary to his duty, &c. [*as in the first count.*]

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And the jurors aforesaid, upon their oath aforesaid, do further present, that the said F. de M. on the said, &c. aforesaid, and long before continually from thence until the day of the taking of this inquisition was an inhabitant and resiant paying scot and bearing lot, within the said parish of C. C. in the said ward of Farringdon Within, in London aforesaid, and that within the same ward there is and from time whereof the memory of man is not to the contrary, there hath been, a certain court, &c. [the same as before, to the end, except the variations of the word "*precinct*," &c.]

Third count, setting out the custom as before, and that the defendant was chosen for a precinct in the ward.

That A. B. late of, &c. yeoman, on, &c. and long before, was an inhabitant in the parish aforesaid, in the county aforesaid, and that the said A. B. then and there was duly summoned

Indictment for refusing to watch with the constable when duly summoned (a).

(a) See other precedents, Burn, J. Watch. Cro. C. C. 143. 7th edit. 289. As to the duty, &c. of watching in general, see Dalt. J. c. 104. Hawk. b. 2. c. 13. s. 2, 3, 4, 5. 6. Burn, J. Watch. By stat. Winchester, c. 4. it is enacted, "that from thenceforth all towns be kept as it had been used in times past, that is, to wit, from the day of Ascension to the day of Saint Mi-

chael in every city, six men shall keep at every gate, in every borough twelve men, in every town six or four, according to the number of the inhabitants of the town, and shall watch the town continually all night, from the sun-setting to the sun-rising." Under this act, every inhabitant is bound to keep watch in his turn, or find a sufficient deputy, and in case he be duly re-

and required to watch in the night of the same day with C. D. then being one of the constables of the same parish, in the county aforesaid, nevertheless the said A. B. wholly neglecting his duty in that behalf, then, to wit, in the night of the same day, or in any part of the same night, did not watch with the said constable, in the parish aforesaid, in the county aforesaid, but to do his duty in that behalf then and there totally did neglect, and wilfully, obstinately and contemptuously then and there did make default, in contempt of our said lord the king, and his laws, and against the peace, &c.

For refusing to execute the office of overseer (a).

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That J. H. late of the parish of C. in the county aforesaid, serge maker, on, &c. and long before, was and still is a substantial housekeeper and residing within, &c. aforesaid, and a proper and able person to serve the office of an overseer of the poor of the said parish: and that the said J. H. on the said, &c. by warrant under the hands and seals of J. C. clerk, and J. P. clerk, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the county of Devon, (one of them, to wit, the said J. C. then being of the quorum) was lawfully nominated and appointed one of the overscers of the poor of the said parish for one year, then next ensuing (b), or until another overseer should be appointed in his stead, whercof the said J. H. afterwards, to wit, on, &c. at, &c. aforesaid, had due notice. Nevertheless the said J. H. his duty in that behalf not regarding, but contriving and intending as much as in him lay to render the said warrant of appointment of no effect on the said, &c. and continually afterwards, until the day of the taking of this inquisition, at, &c. aforesaid, unlawfully, wilfully, obstinately, and contemptuously, did neglect and refuse, and still doth neglect and refuse to take upon himself and execute the said office of overseer of the poor of the said parish of C. contrary to his duty in that behalf, to the great damage of the said parish and parishioners, in manifest contempt, &c. to the evil example, &c. and against the peace, &c.

quired so to do and refuse, he is liable to be indicted for his nonfeasance, Hawk. b. 2. c. 13. s. 4. But a stranger who is not an inhabitant of the place, cannot be compelled, by virtue of the statute of Winchester, to keep watch within it, Cro. Eliz. 204.

(a) See form, 4 Wentw. 338. 2 Stark. 2d edit. 619. ante, 266, note (a); see another form, where defendant appointed overseer for a ward, 4 Wentw. 349.

(b) This will be intended the usual overseer's year, 4 T. R. 773.

DISOBEDIENCE OF ORDERS OF JUSTICES, &c.

That S.F. of, &c. before the making of the order of justices hereinafter mentioned, to wit, on, &c. at, &c. aforesaid, was delivered of a female bastard child, which said bastard child, at the time of the making of the order, and also at the time of the contempt and disobedience hereinafter mentioned, was and yet is living, to wit, at the township of C. aforesaid. And the jurors, &c. do further present, that the said S.F. having such bastard child as aforesaid, she the said S. F. on, &c. aforesaid, at, &c. aforesaid, became, and was very poor and impotent, and not able to provide for herself

Against an overseer for not paying a weekly sum for the support of a pauper and illegitimate child, according to order of justices (a)

(a) See other precedents, 2 Burr. 800. 1 T. R. 316. Cro. C. C. 327 to 331. 4 Wentw. 227 to 230, 345. Stark. 2d ed. 607. Cald. 72. 8 East, 41. See form of indictment against treasurer of county for refusing to obey magistrate's order to pay a constable the expences of apprehending, &c. a deserter, 3 M. & S. 62. *The offence.* Disobedience of an order of justices, commissioners, &c. is an offence indictable at common law, though a specific penalty is provided by statute for the neglect of that duty which the order is intended to enforce, 2 Burr. 799. 4 T. R. 205. 8 East, 41. The 33 Geo. 3. c. 55. s. 1. gives power to two justices at petty sessions, to punish constables, and peace and parish officers in a summary manner for disobedience of orders, and other misconduct. *The indictment.* It must appear on the face of the indictment, that the order disobeyed was a legal order, and such previous orders as are the foundation of the magistrate's authority must be recited, or at least referred to in an indictment for dis-

obedience of such authority, Cald. 183; but if there is a positive averment of disobedience to the order of a court of competent jurisdiction, the indictment will be good without a direct allegation of that which is the foundation of such jurisdiction, nor can a defendant otherwise avail himself either at the trial or elsewhere, but by shewing a want of jurisdiction in the court, Cald. 536. The indictment need not set forth the conviction at length on which the order was founded, 2 Lord Raym. 1196. The indictment should state that the order was positively made, and not set it forth by way of recital, id. 1363. It must be stated and shown, that the order was served on all the defendants, and the want of this allegation cannot be supplied by stating that they were all requested to perform the duties required by the order, but the indictment will be bad on demurrer, 8 East, 52, 53; and see Cald. 554. It seems safest to state that the defendant was requested to comply with the terms of the order. 1 T. R. 316.

and her said bastard child; and the said S.F. so being very poor and impotent, and not able to provide for herself and her said bastard child as aforesaid, she the said S.F. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, applied to the then overseers of the poor, of and for the township of C. aforesaid, for relief in the premises, and that the then overseers of the said poor, and each and every of them, then and afterwards did wholly neglect and refuse to relieve the said S.F. so being very poor and impotent as aforesaid, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said S.F. so being very poor and impotent, and unable to provide for herself and her said bastard child, after such neglect and refusal as aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, appeared before H. W. clerk, and W. W. esq., then being two of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] and then and there, before the said H. W. and W. W. being such justices as aforesaid, took her corporal oath upon the holy gospel of God, and did depose, that she the said S. F. was very poor and impotent, and unable to maintain herself and her said child; and that she the said S. F. had then lately applied for relief to the then overseers of the poor of the said township, and was by them the said overseers refused to be relieved on that occasion. And the jurors, &c. upon their oath aforesaid, do further present, that the said H. W. and W. W. being such justices as aforesaid, did thereupon; afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, duly summon the said overseers to appear before them, the said H. W. and W. W. being such justices as aforesaid, and show cause why relief should not be given to the said S. F. in the premises, and that the said then overseers having been so summoned as aforesaid, did, before the said H. W. and W. W. being such justices as aforesaid, refuse to relieve the said S. F. on that occasion, and did not show to the said justices any sufficient cause why relief should not be granted to the said S. F., and that the said H. W. and W. W. being such justices as aforesaid, did thereupon, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, make their certain order in writing, signed with the proper hands, and sealed with the respective seals of them the said H. W. and W. W. so being such justices as aforesaid, whereby, after reciting, &c. [*here set out the order verbatim.*] And the jurors, &c. do further present, that one J. F. late of, &c. on, &c. and long before and afterwards, was one of the overseers of the poor, of

and for the township of C. aforesaid, having duly accepted the said office, to wit, at the township of C. aforesaid, and that it was then and there the proper office and duty of the said J. F. as such overseer as aforesaid, well and faithfully to execute and obey the said order of the said H. W. and W. W. so made as aforesaid, according to the exigency thereof. And the jurors, &c. do further present, that the said order of the said H. W. and W. W. so made as aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, was duly shewn and delivered to the said J. F. so being such overseer as aforesaid, to be by him well and faithfully executed and obeyed in all things, according to the exigency thereof, and according to the said office and duty of the said J. F. as such overseer as aforesaid.* And the jurors, &c. do further present, that the said J. F. so being such overseer as aforesaid, and so having seen and received the said order as aforesaid, afterwards, to wit, on the said, &c. and continually from thenceforth, for and during all such time as the said J. F. continued in his said office of overseer of the poor of the town of C. aforesaid, unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse, and hath hitherto wholly neglected and refused to pay unto her the said S. F. the sum of one shilling and sixpence weekly and every week, for and towards the support and maintenance of her the said S. F. and her said bastard child, as by the said order he the said J. F. as such overseer as aforesaid, was required to do; and the same and every part thereof is still wholly due and unpaid to the said S. F. although she the said S. F. whilst the said J. F. remained and continued as such overseer as aforesaid, to wit, on, &c. aforesaid, and on divers other days and times, as well before as after, &c. at, &c. aforesaid, requested him the said J. F. to pay her the same(a), and although he the said J. F. hath not, at any time whatsoever, hitherto been otherwise ordered, according to law, to forbear the said allowance, contrary to the said office and duty of the said J. F. in that behalf, to the manifest hindrance and subversion of justice, to the great damage and impoverishment of the said S. F. and her said child, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

That I. T. of the township of A. in the parish of M. in the county of L. single woman, before the making of the order of

Indictment
against the father
of a bastard
child, for dis-

(a) As to averment of request, see 1 T. R. 316.

obeying an order
of justice for
maintenance (a).

justices, hereafter mentioned, to wit, on, &c. at the said, &c. was delivered of a living male bastard child. And the jurors, &c. do further present, that the said I. T. having been so delivered of such bastard child, within the township aforesaid, afterwards, to wit, on, &c. at the township aforesaid, complaint thereof, and that the said child was then christened by the name of John, and was then chargeable to the said township, and likely so to continue, was by the overseers of the poor of the said township of A. made to J. F. esq. and T. B. esq. two of his majesty's justices of the peace and quorum, in and for the said county of L. and residing next unto the limits of the parish church of M. in the said parish of M. in the said county, and she the said I. T. was by them the said overseers of the poor, then and there brought and personally appeared before the said justices, so residing, to be, and was thereupon then and there examined upon oath, by and before the said justices, of and concerning the cause and circumstance of the begetting and birth of such bastard child. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said I. T. upon her said examination upon oath, then and there taken in writing, by and before the said justices, deposed and declared, that she was delivered of such bastard child, as aforesaid, and that R. A. of, &c. was the true and only father of the said bastard child. And the jurors, &c. do further present, that the said J. F. esquire, and T. B. esquire, so being such justices, residing as aforesaid, did thereupon, afterwards, to wit, on, &c. last aforesaid, at the township of A. aforesaid, duly summon the said R. A. to be and appear before them the said justices to make his defence of and concerning the premises, and to show cause why an order of maintenance should not be made upon him for the cause aforesaid, to which said summons he the said R. A. then and there, before the making of any order in that behalf, personally appeared before the said justices, but did not make any sufficient defence, or show any cause why an order should not be made upon him; whereupon the said justices, upon hearing the said complaint upon oath, afterwards, to wit, on, &c. last aforesaid, at the township aforesaid, did, by their discretion, take, order, of and concerning the premises, and by their said order in writing, under their hands and

(a) See form, 4 Wentw. 227. 1st edit. 172, 216. See ante, Au indictment lies, Burr. 799. 279, n. (g).
1 Bott, 381, pl. 446. 2 Nolan,

seals, bearing date, &c. reciting to the effect hereinbefore mentioned, adjudge the same to be true, and thereby as well upon examination of the cause and circumstances of the premises, upon the oath of the said I. T. as otherwise, did declare and adjudge the said R. A. [*set forth the order verbatim.*] And the jurors, &c. do further present, that after the making the said order, to wit, on, &c. last aforesaid, at the township aforesaid, notice of the aforesaid order was duly given to him the said R. A. and that he the said R. A. was duly made acquainted with the contents thereof. And the jurors, &c. do further present, that the said bastard child is yet living, and hath always from the time of making the said order, until the day of taking this inquisition, been and continued, and now is chargeable to the said township of A. to wit, at the township aforesaid, and that before and at the time of making of the said order, and from thence continually, till the taking of the inquisition, one — and one — were and still are overseers of the poor of the said township of A. duly constituted, of which he the said R. A. had due notice, to wit, at the, &c. aforesaid; And the jurors, &c. do further present, that the said R. A. not regarding the said order, nor the laws and statutes in such case made and provided, did not upon notice of the said order forthwith, pay, or cause to be paid, &c. [*negating the performance of the duty in the words of the order*] although so to do, he the said R. A. afterwards, to wit, on, &c. and often both before and afterwards, to wit, at the township aforesaid, was duly requested by the said, &c. so being such overseers as aforesaid, but on the contrary thereof, he the said R. A. on, and from the said, &c. until the taking of this inquisition, unlawfully, wilfully, obstinately, and contemptuously, hath neglected and refused to pay, or cause to be paid, the said sum of twenty shillings, so by him to be paid as aforesaid, as also the said sum of one shilling weekly, and every week, from the time of making the said order, hitherto, contrary to the direction of the said order, and in manifest breach and contempt of the same, to the great damage of the inhabitants of the said township of A., to the evil and pernicious example of, &c. and against the peace, &c.

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That at the general quarter session of the peace of our lord the king, holden at — in and for the county of M. by adjournment, to wit, on, &c. before W. M., J. S., W. H., and

Indictment for a
contempt by a
high constable, in

disobeying an order of sessions (a)

[284]

W.A., esquires, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] it was ordered by the same justices and court there as followeth, to wit: It is ordered by this court, "that, &c. [*here set out the order verbatim*] as by the said order of court more fully appears, of which said order the said T. J. one of the high constables in the aforesaid order named, afterwards, to wit, on, &c. aforesaid, at, &c. had notice, nevertheless the said T. J. late of, &c. on the said, &c. (then being high constable of H. division as in the order above-mentioned) on, &c. at, &c. aforesaid, at the hour of three in the afternoon of the same day, and throughout that day, at the parish of S. aforesaid, in the county aforesaid, unlawfully and contemptuously did neglect and refuse to [*negative the performance in the words of the order*] as by the said order he the said T. J. was required to do, in contempt, &c. to the great hindrance and obstruction of justice, to the evil example, &c. and against the peace, &c.

Against surveyors of highways, for disobeying order of magistrate to agree with owners of land to purchase same in order to widen road (b).

West Riding of Yorkshire, to wit. The jurors, &c. that the township of B. within the division of M. in the said West Riding of Y. now is, and from time whereof the memory of man is not to the contrary, hath been an ancient township, and that within the said township, division, and riding, there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain common king's highway, called, &c. leading from, &c. to, &c. used for all the king's subjects to go, return, pass, ride, and labour on foot, and with their cattle and carriages, at all times, at their will and pleasure. And the jurors aforesaid, upon their oath aforesaid, further present, that R. W. esquire, and H. W. esquire, two of his majesty's justices of the peace for the said W. R. of Y. acting within the said division of M. on, &c. at, &c. aforesaid, according to the form of the statute, in that case made and provided, did view the said highway, and upon such view it did then and there appear to the said R. W. and H. W. so being such justices as aforesaid, and the said R. W. and H. W. so being such justices as aforesaid, did then and there

(a) See a fuller form, Cro. C. C. 7th ed. 292. This form will suffice for any case of disobedience of order of sessions, see ante, 279, note (a).

(b) This precedent is from Mr. J. Ashhurst's MS. paper books, 19 vol. 28, founded on 13 Geo. 3. c. 78. s. 16. see ante, 279, note (a).

find, that a certain part of the said highway, in the township of B. in the said division, called, &c. for the length of four hundred and seventy yards, or thereabouts, from, &c. to, &c. was narrow, but might be conveniently enlarged and widened by adding thereto, from the several lands and grounds of J. B. (and several others) of the length of four hundred and seventy yards, or thereabouts, and of such breadth as, added to the said road, would make the same of the breadth of thirty feet, which they the said R. W. and H. W. then and there thought would be much more commodious to the public; and that the said R. W. and H. W. so being such justices as aforesaid, did, thereupon, afterwards, to wit, on, &c. aforesaid, at the township of B. aforesaid, according to the form of the said statute, make their certain order in writing, signed with their proper hands, and sealed with the seals of the said R. W. and H. W. so being such justices as aforesaid, whereby, after reciting that, &c. [*set forth the order verbatim.*] And the jurors aforesaid, upon their oath aforesaid, further present, that one A. B. and one J. G. on the said, &c. and before, were, and from thenceforth hitherto have been and still are, surveyors of the highways of and for the said township of B. having duly accepted the said office (to wit) at, &c. aforesaid, in, &c. aforesaid, and that it was then and there the proper office and duty of the said A. B. and J. G. as such surveyors as aforesaid, well and faithfully to execute and obey the said order of the said R. W. and H. W. so made as aforesaid, in all things, according to the exigency thereof. And the jurors, &c. do further present, that the said order of the said R. W. and H. W. so made as aforesaid, with the said plan thereto annexed, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, in, &c. aforesaid, was duly delivered to the said A. B. and J. G. so being such surveyors of the highways of the said township of B. as aforesaid, to be by them well and faithfully executed and obeyed in all things, according to the exigency thereof, and according to the said office and duty of the said A. B. and J. G. as such surveyors as aforesaid. And the jurors, &c. further present, that the said A. B. late of B. esq. and the said J. G. late of, &c. so being such surveyors of the highways for the said township of B. as aforesaid, and so having received the said order as aforesaid, afterwards, to wit, on, &c. aforesaid, and from thenceforth hitherto, at, &c. aforesaid, in, &c. and unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse, and still do neglect and

refuse, to, &c. [*negative the performance of the duty in the terms of the order*] contrary to the said office and duty of the said A. B. and J. G. as such surveyors as aforesaid, in disobedience of the said order. In contempt, &c. To the evil example, &c. and against the peace, &c. and against the form of the statute, &c.

Against a surveyor of the highways, for not making a rate on all the occupiers of land liable to repairs to pay for such, according to warrant, to him directed (a).

[286]

That at the general quarter session of the peace of our lord the present king, holden at L. in and for the county of L. on, &c. before J. F. esquire, and R. F. clerk, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] an indictment was found by the jurors then and there impannelled, sworn, and charged to inquire for our said lord the king and the body of the same county, in the following words, viz. Lancashire, to wit. The jurors, &c. [*here set out the indictment for the non-repair of the highway.*] And the jurors, &c. do further present, that at the general session of the peace holden at L. aforesaid, in and for the county aforesaid, on, &c. before J. F. and W. B. esquires, and other their fellow justices of our said lord the king, assigned, &c. [*as ante*, 182] J. C. and T. B. two inhabitants of the township of W. aforesaid, came and personally appeared to the said indictment, and then and there on behalf of themselves and the rest of the inhabitants of the township of W. aforesaid, submitted to the said indictment, and that thereupon the judgment of the said court was then and there given in the premises, and a fine of £80 was thereby imposed and laid upon the said inhabitants for the said offence in the said indictment specified. And the jurors, &c. do further present, that at the general quarter session of the peace, holden, &c. before J. F. and W. B. esquires, and others, &c. assigned, &c. it was ordered by the same court and justices last-above-named, that the said fine, so as aforesaid imposed and laid upon the said inhabitants of the township of W. as aforesaid, should be estreated and levied, and the said court did order and direct that the said fine of £80 should be levied upon the said inhabitants, and be paid into the hands of J. C. surveyor of the highways in the township of W. aforesaid (the said J. C. being then and there a person residing within the said township), and that the said fine so as aforesaid, when levied and paid, should be by the said J. C. applied to-

(a) See form, 4 Wentw. 345, and ante, 279, n. (a).

wards the repair, amendment, and enlargement of the same highway. And the jurors, &c. do further present, that afterwards, on, &c. at, &c. aforesaid, the said fine of £80 was in due manner levied by the said J. C. upon F. K. then and still being one of the inhabitants of the township of W. aforesaid, in pursuance and execution of the said order, and of the said judgment so given as aforesaid. And the jurors, &c. do further present, that a special sessions for the highways was, pursuant to the statute in that case made and provided, duly held at the house of A. B. being the sign of the Grapes in L. within the hundred of L. in the county of L. on, &c. before T. B. and R. F. clerk, two of his said majesty's justices of the peace for the said county, within the said hundred, due notice having been first given of the holding of the same session, pursuant to the statute in that behalf, and that the said F. K. did personally appear and make his complaint to the said justices of the peace at the said special sessions of and concerning the levying the said fine upon him the said F. K. as aforesaid; and the said last-mentioned justices of the peace, at the said special sessions, did then and there duly issue and make a certain warrant in writing under their hands and respective seals, and did thereby order, direct, and appoint, amongst other things, that an equal and sufficient rate or assessment upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments within the said township of W. should be forthwith made by the surveyors of the highways of the said township, for the reimbursing the said F. K. the said sum of £80 so levied on him as aforesaid, which said warrant so made as aforesaid, was afterwards, to wit, on, &c. in the township of W. aforesaid, delivered to and left with the said J. C. then and there being one of the surveyors of the highways in and for the said township of W. to be by him and the other surveyor of the said highways in the township of W. executed in due form of law. And although A. B. who then and there was and still is the other surveyor for the township of W. hath always been ready and willing to execute the said warrant on his part, and to join with the said J. C. in making the said rate or assessment as aforesaid, yet the said J. C. late of W. in the said county of L. yeoman, not regarding his duty in that behalf, hath not at any time since the said warrant was so made and delivered to him as aforesaid, made or joined or assisted in the making an equal rate or assessment upon all and every the occupiers of lands and tenements, woods, tithes, and hereditaments within

the said township of W. for the purpose aforesaid (a), but on the contrary thereof, the said J. C. on, &c. and ever since (then and still being one of the surveyors of the highways in and for the township of W.) at W. aforesaid, unlawfully and contemptuously did neglect and refuse, and hath neglected and refused to make, join, and assist in the making of an equal and sufficient rate or assessment upon all and every the occupiers of lands, &c. within the township of W. for the purpose aforesaid, as by the said warrant, under the hands and seals of the said last-mentioned justices at their special sessions aforesaid, he the said J. C. one of the surveyors of the highways for the said township of W. was required to do, in contempt, &c. to the evil example, &c. and against the peace, &c.

For disobeying
an order of jus-
tices for relief,
under friendly so-
ciety act, 33 G. 3.
c. 54. (b).

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That before and at the time of the passing of a certain act of parliament, made and passed in the 33d year of the reign of our sovereign lord George the Third, by the grace of God, &c. intituled, "An Act for the Encouragement and Relief of Friendly Societies," a certain Friendly Society called the Original Friendly Society, had long been and still is existing, to wit, at, &c. and that all the articles, rules, orders, and regulations under which the society was thereafter to be governed, were duly, and according to the direction of the said statute, exhibited, allowed, and confirmed, and filed of record, at the general quarter sessions of the peace, holden at, &c. in and for the said, &c. before the feast-day of St. Michael, in the year of our Lord 1794, to wit, on, &c. to wit, at, &c. aforesaid, and afterwards, at the general quarter sessions of the peace, holden in and for the said city and county, on, &c. certain new rules, orders, and regulations, under which the said society was thereafter further to be governed, were exhibited, allowed, and confirmed, and then and there filed of record, according to the direction of the said statute, at, &c. aforesaid, and that according to one of the said last-mentioned rules, orders, and regulations, it was (amongst other things) ordained, that, &c. [*here set forth the rule verbatim.*] And the jurors, &c. do further present, that one J. W. of, &c. for a

(a) Quære, if not advisable to lay a special request, see ante, 279, n. (a).

(b) See a similar case, 2 Smith's Rep. 56, and ante, 279, note (a). This indictment was

settled by an eminent crown lawyer; that the offence is indictable, see 4 T. R. 202. 2 Burr. 799. 1 T. R. 316. See also 49 Geo. 3. c. 126. ss. 3, 4.

long space of time, and before the exhibition, allowance, confirmation, and filing of record of the said last-mentioned rules, orders, and regulations as aforesaid, had been and was a member of the said society, duly admitted and inrolled in the said society's book for the space of one whole year, to wit, at, &c. aforesaid, and that he the said J. W. so having been, and being such member as aforesaid, before and on, &c. at the, &c. aforesaid, was, by sickness, rendered incapable of, and disabled from working at his trade or business of a cordwainer or otherwise, for his livelihood, and did, afterwards, to wit, on the, &c. aforesaid, at, &c. aforesaid, give, and cause to be given, due notice of, and declare, and cause to be declared, the same to one J. R. late of the said, &c. tailor, he the said J. R. at the time of giving such notice, and from thence hitherto continually having been high steward of the said society according to the rules, orders, and regulations thereof, to wit, at, &c. aforesaid, whereby and by virtue of the said last-mentioned rules, orders, and regulations, the said J. W. then and there became and was entitled to, and did thereupon claim to be allowed, during the time for which he should continue so incapable as aforesaid, the sum of five shillings per week, from the funds of the said society, he the said J. W. having, for upwards of twelve calendar months before then elapsed, received out of the joint stock of the said society, six shillings a week for his relief. [*N. B. all this to be stated in conformity to the rule, as it may be.*] And the jurors, &c. do further present, that a certificate, under the hand of T. W. G. surgeon to the said society, that he the said J. W. was, by sickness, rendered incapable of working at his trade or business, or otherwise, for his livelihood, was afterwards, that is to say, on the said, &c. delivered to the said J. R. to wit, at, &c. aforesaid. And the jurors aforesaid, on their oath aforesaid, do further present, that the said J. W. was, upon and from and after the said, &c. aforesaid, by sickness rendered incapable of, and disabled from, working at his trade or business, or otherwise, for his livelihood, and so remained and continued until, &c. by reason whereof, and according to the tenor and effect of the rule, orders, and regulations of the said society, the said J. W. had on, &c. last aforesaid, become and was lawfully entitled to receive from the said J. R. as such high steward as aforesaid, a large sum of money, to wit, the sum of five pounds for twenty weeks' allowance of five shillings per week from the funds of the said society, to wit, at, &c. aforesaid. And the jurors, &c. do

further present, that the said J. R. so being such high steward as aforesaid, did not, and would not, on the said, &c. pay to the said J. W. the said sum of five pounds from the funds of the said society, but from, &c. to the said, &c. had only paid to the said J. W. the sum of five shillings, and the remaining sum of four pounds twelve shillings, still remain due and unpaid from the funds of the said society, by the said J. R. as such high steward as aforesaid, to the said J. W., and the said J. R. so being such high steward as aforesaid, during all the time last aforesaid, continually neglected, forebore, and refused to pay to the said J. W. any more or further sum of money for the cause and occasion aforesaid, from the funds of the said society, to wit, at, &c. aforesaid, and the said J. W. so being by sickness rendered incapable of, and disabled from, working at his trade or business, or otherwise, for his livelihood, on the same day and year last aforesaid, at, &c. aforesaid, personally came and appeared before J. S. gent. and C. S. esquire, being two of the justices of our said lord the king, assigned to keep the peace in and for the said city and county of the said city, and then and there residing in the said city and county of the said city, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said city and county of the said city committed, and then and there residing, and each of them residing, in the said city and county of the said city, and then and there, before the said J. S. gent. and C. S. esquire, being such justices aforesaid, took his corporal oath upon the holy gospel of God, and they the said justices then and there having competent authority to administer an oath, the said J. W. in that behalf, and did depose and give the said justices to understand and be informed, that he the said J. W. had been, for forty years and upwards, and still was, a member of the said society, and that he the said J. W. before and on, &c. was by sickness rendered incapable of, and disabled from, working at his trade or business, or otherwise, for his livelihood, and did give due notice of, and declare the same to J. R. of the parish of St. Michael, in the said city and county, tailor, he the said J. R. at the time of giving such notice, being high steward of the said society, according to the rules of the said society, and did thereupon claim to be allowed the weekly sum of five shillings during the time which he should continue so incapable as aforesaid, from the funds of the said society, pursuant to the articles of the said society, and that a certificate, under the hand of T. W. G. surgeon to the said society, that he the said

J. W. was by sickness rendered incapable of working at his trade or business, or otherwise, for his livelihood, was, on the said, &c. delivered to the said J. R. and that the said J. W. had ever since the said, &c. been, and still was, by sickness, rendered incapable of, and disabled from, working at his trade or business, or otherwise, for his livelihood, and on, &c. then instant, became, and still is, lawfully entitled, according to the rules of the said society, to the sum of four pounds twelve shillings, which, with eight shillings already received from the said J. R. made the sum of five pounds for twenty weeks' allowance from the funds of the said society, and that the said J. R. had not paid the said informant J. W. the said sum of four pounds twelve shillings, to which he was entitled as aforesaid, or any part thereof, and that the same was still due and owing to the said J. W. according to the rules of the said society, to wit, at the, &c. aforesaid. And the jurors, &c. do further present, that the said J. S. and C. S. being such justices as aforesaid, did thereupon afterwards, to wit, on, &c. aforesaid, duly summon the said J. R. to appear before them the said J. S. and C. S. so being such justices as aforesaid, to show cause why the said sum of four pounds twelve shillings, should not be paid to the said J. W. accordingly, and that the said J. R. having been so summoned as aforesaid, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, and before the said J. S. and C. S. being such justices as aforesaid, personally appeared to show to the said justices cause why the same should not be paid as by the said summons he was required: and that the said J. S. and C. S. being such justices as aforesaid, did thereupon, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, hearing as well what was alleged and proved, as well by the said J. W. as by the said J. R. of and concerning the premises before them the said justices, did then and there make their certain order in writing, signed with their proper hands, and sealed with the respective seals of them the said J. S. and C. S. so being such justices as aforesaid, the tenor of which said order is as follows:—[*It was here observed, that the order should be here set out verbatim and literatim, so that upon a writ of error or removal, by certiorari, the order may appear on the face of it to have properly pursued the authority given by the statute; but quære, if not sufficient to state the order without stating the tenor, &c. After reciting all the preceding circumstances, and the proceedings before the justices, the order, as set forth, proceeded as follows.*] There-

upon, they the said justices, did thereby order, that the said J. R. should forthwith pay to the said J. W. the sum of four pounds twelve shillings, as and for the arrears of the said weekly allowance, which became due from the said society to the said J. W., on the ninth day of February, then instant. And they the said justices did thereby further order, that the said J. R. should forthwith pay to the said J. W. the further sum of ten shillings, as and for the costs sustained and paid by him, in and about the premises, making together, with the said sum of four pounds twelve shillings, the sum of five pounds two shillings; to wit, at, &c. aforesaid. And the jurors, &c. do further present, that after the said order of the said J. S. gent. and C. S. esquire, the said justices, was so then and there made, in the premises as aforesaid, to wit, on, &c. at, &c. aforesaid, the said J. R. so being such high steward as aforesaid, had notice of the said order, and the said sum of five pounds two shillings, was then and there, by the said J. W. duly demanded of the said J. R. high steward as aforesaid, to be then and there paid by him the said J. R. so being such high steward as aforesaid, to him the said J. W. in pursuance of, and obedience to, the said order of them the justices aforesaid, according to the exigency thereof, and according to the said office and duty of the said J. R. as such high steward of the said friendly society as aforesaid. And the jurors, &c. do further present, that the said J. R. well knowing the premises, afterwards, to wit, on the said, &c. at, &c. aforesaid, unlawfully, knowingly, wilfully, obstinately, and contemptuously, did then and there wholly neglect and refuse to pay to the said J. W. the said sum of five pounds two shillings, as by the said order he the said J. R. was required to do, or in any wise to obey the said order, and the same still remains wholly disobeyed and set at naught by the said J. R. to wit, at, &c. aforesaid, in great contempt of the laws and statutes of this realm, to the evil example, &c. and against the peace, &c. [*Second count, stating only the substance of the order.*]

Against the stewards, &c. of a friendly society for disobeying an order of justices to appear and produce their rules, &c. (a).

That one E. F. before the making of the order hereinafter mentioned, had been, and was admitted a member of a certain friendly society, called, &c. established at, &c. by virtue of a certain act of parliament, made and passed in the parliament

(a) From the MS. of a gentleman at the bar. See the last precedent.

of our lord the king, holden at Westminster, in the county of Middlesex, in the thirty-third year of the reign of our said lord the king; intituled, An act, &c. the rules, orders, and regulations of which said society were duly confirmed, according to the directions of the said act of parliament. And the jurors, &c. do further present, that the said J. A. having been admitted a member of the said society, as aforesaid, before the making of the order hereinafter mentioned, had been expelled from the said society, and deprived of certain relief and maintenance, to which he considered himself entitled by the stewards of the said society for the time being, and other officers and members thereof, and the said E. F. thought himself aggrieved thereby, and thereupon made complaint thereof to, &c. and, &c. two of his majesty's justices of the peace, assigned, &c. in which the said society was established as aforesaid, against A. B. late of, &c. and C. D. late of, &c. who then, and from thence, until, and at the time of the disobedience of the order hereinafter mentioned, were stewards of the said society, I. K. late of, &c. who then, and during that time, was one of the members of the said society, L. M. late of the same place, &c. who then, and during that time, was clerk to the said society; and the said defendants were thereupon duly summoned by the said justices to appear before them at a convenient time and place named in such summons, they, the said defendants, or some or one of them, appearing to such justices to have the custody of the said rules, orders, and regulations of the said society, and the said defendants had not appeared before the said justices, pursuant to the said summons, to wit, at, &c. And the jurors, &c. do further present, that thereupon, heretofore, to wit, on, &c. at, &c. the said defendants so being such justices as aforesaid, on proof upon oath of such summons as aforesaid being duly served, did proceed to hear and determine the matter of the aforesaid complaint, according to the true purport and meaning of the said rules, orders, and regulations of the said society, and the directions of the said act of parliament, and did thereupon then and there make a certain order in writing, under their hands and seals, directed to the said, &c. so being stewards of the said society, the said, &c. so being a member thereof, and the said, &c. so being clerk thereof, as aforesaid, and all other persons whomsoever, being officers or members of the said society, whereby, after reciting, amongst other things, that, &c. [*recite the order,*] as by the said order of justices

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fully appears, of which order the said defendants heretofore, to wit, on, &c. at, &c. had notice. And the jurors, &c. that the said, &c. so being stewards of the said society, the said, &c. so being a member thereof, and the said, &c. so being clerk thereof as aforesaid, well knowing the premises, but not regarding the said order, nor the said act of parliament, did not, nor would, nor did, nor would either of them personally, or otherwise, be or appear before the said justices at the time and place in that behalf above mentioned: nor did, nor would, then and there produce before them, the said justices, for their inspection, such books, papers, and writings, as aforesaid, or any, or either of them, or in any respect comply with, or obey, or regard the same order, as they could, and might and ought to have done, but wholly refused and neglected so to do, and therein then and there wholly failed and made default, contrary to the form of the said order, and the said statute in such case made and provided, to the evil example, &c. and against the peace, &c.

FOR EXTORTION.

Against a constable for taking money of a person whom he had apprehended, under pretence of getting him discharged, without any proceedings being had before the justice of the peace (a).

That C.O. late of, &c. on, &c. at, &c. then and still being one of the peace officers of our said lord the king, called a headborough, in and for the parish of, &c. in the county aforesaid, did arrest and take into his custody one W. S., by virtue and under colour of a warrant of J. G. esq. then and still being one of the justices of our said lord the king, assigned, &c. [as ante, 182.] then and there directed to the constables, and other his majesty's officers of the peace of the said county, to

(a) See form, 4 Wentw. 146, and ante, 258, note (a). See other precedents, 3 Ld. Raym. 61. Burn, J. Extortion. Williams, J. Extortion. Cro. C. C. 193 to 197. 4 Wentw. 146, 147. Dick. Sess. 177. Stark. 610 to 617, 2d edit. *Offence*. See, in general, Co. Lit. 368. b. 2 Inst. 209, 210. 3 Inst. 149, 150. Hawk. b. 2. c. 68. Com. Dig. Extortion, Officer, H. Bac. Abr. Extortion, Officer,

N. Burn, J. Extortion. Williams, J. Extortion. Cro. C. C. 196, 197, and ante, vol. i. 44, 832. Extortion, in its strict legal acceptation, signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due, Co. Lit. 368. b. It was a high misdemeanor at common law, and punishable by imprisonment and fine; id.

take and bring before the said J. G., or some other of his majesty's justices of the peace of the said county, the body of the

ibid. And, therefore, at common law, an indictment lies against a judge for taking a fee for his judgment, an officer for receiving more than the usual fee, a ferryman for demanding more than is due to him by prescription, or a sheriff for refusing to execute process until his fees are paid him. *Com. Dig. Extortion, A.* By the statute of 3 *Edw. 1. c. 16.* in affirmance of the ancient law, it is enacted, that no sheriff, nor other king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and that he who so doth, shall yield twice as much, and shall be punished at the king's pleasure. This act, which thus particularly names the sheriff, extends to every ministerial officer concerned in the administration or execution of justice, the common good of the subject, or the service of the king, 2 *Inst. 209.* And all prescriptions contrary to this act are void, so that where the clerk of the market claimed fees, incident to his situation, which had been attached to it from time immemorial, his perquisite was defeated, *Moor, 523.* Where a statute annexes a fee to an office, it will be extortion to take more than it specifies, 2 *Inst. 210.* And it seems that if a clerk in the crown office demands 13s. 4d. from every defendant who pleads to a joint information, or above 2s. where several are indicted together, for the venire and entry of the plea for all of them, he will be liable to be indicted, 3 *Mod. 247.* 3 *Inst. 150.* But stated and known fees allowed by

courts of justice to their now officers are legal, and may be properly demanded, *Co. Lit. 368, b.* And, therefore, before the abolition of gaol fees by 14 *Geo. 3. c. 20,* [now by 55 *Geo. 3. c. 50,*] on a prisoner's discharge, the bar fee of 20d. was always allowed to the sheriff, 2 *Inst. 210.* Nor is it criminal for an officer to take a reward voluntarily offered him for the more diligent or expeditious performance of his duty, 2 *Inst. 210, 11.* But a promise to pay him money for any act of duty which the law does not suffer him to receive, is absolutely void, however freely it may have been given, 2 *Burr. 924.* 1 *Bla. Rep. 204.* There are no accessories in extortion, 1 *Stra. 75.* It may be tried and determined by justices of the peace, by virtue of the term "*extortions*" in their commission, *id. ibid.*

Indictment. Several defendants may be jointly indicted when no fee was due, 2 *Lord Raym. 1248.* 3 *Leo. 268.* *Com. Dig. Extortion, C. 1* *Stra. 175.* It has been supposed that an indictment for extortion may, by 31 *Eliz. c. 5. s. 4,* be laid in any county, *Hawk. b. 1. c. 68. s. 6.* *Stark. 585,* note (k), but quære, if that section applies to indictments. The time of the offence must be alleged, 4 *Mod. 101, 103.* The indictment must state a sum which the defendant received, and it will not be sufficient to aver that he did receive a gift or reward without specifying value, 4 *Burr. 2471.* 2 *Leach, 794,* though it is not material to prove the exact sum as laid in the indictment, 1 *Ld. Raym.*

said W. S. to answer all such matters and things, as on his majesty's behalf were on oath objected against him by J. W., for assaulting and beating him, and tearing the hair from his head; and the said W. S., so being in custody aforesaid, for the purpose aforesaid, to answer the complaint aforesaid, he, the said C. O. fraudulently, unlawfully, and injuriously, and with force and arms, did then and there obtain of and from the said W. S., the sum of one shilling, of lawful money of Great Britain, of the money of the said W. S. upon colour and pre-

149. 6T. R. 267. So in an information, though several sums and specific persons are stated to have been the objects of the defendant's extortion, if it conclude with a general charge of which he is found guilty, that under colour of his said office, he did illegally cause his agents to receive and demand of *several other persons several other sums of money*, under pretence of weighing and examining their several weights and measures, the whole will be vitiated and judgment will be arrested, 2 Stra. 999.—A person who has been appointed by proper authorities collector of certain duties, but whose appointment subsequently appears to have been informally made, cannot be indicted at common law for fraudulently receiving monies *under colour and pretence of being collector*, because he was, in fact, collector at the time, and received the money in that character; but he should be proceeded against under 43 Geo. 3. c. 99. which directs that no collector, &c. employed in carrying into effect that statute, shall be liable to any other penalties than it prescribes, 7 East, 218. If the indictment charge that the defendant, as bailiff of a hundred, under colour of his office, took a sum of money, without showing more parti-

cularly by what pretence it was taken, it will be good at least after verdict; for, perhaps, he might claim it generally as being due to him as bailiff, in which case, the demand could not be otherwise stated, 1 Sid. 91. Where nothing at all was due, that fact ought to be averred, and where any thing was due, the sum which might have been lawfully taken must be expressed, 3 Leon. 268. Com. Dig. Extortion, C. The court will not quash an indictment for extortion upon motion, though it appear to be defective, but leave the party to demur, 5 Mod. 13. *Punishment.* The punishment for extortion at common law, is by imprisonment, fine, and forfeiture of the office abused, Co. Lit. 368, b. Hawk. b. 1. c. 68. s. 5. By 3 Edw. 1. c. 26, the defendant shall render double to the party aggrieved, and be punished at the king's pleasure. In the construction of this enactment, it has been holden, that the double value cannot be recovered upon an indictment, but must be sued for by action, Cro. Car. 448. The terms, "*at the king's pleasure*," signify here, as in other provisions where they occur, the discretion of the justices, who are to pronounce the sentence, 2 Inst. 210.

tence, that he, the said C. O. would procure and get the said warrant discharged by one of the justices of the peace of the said lord the king, assigned to keep the king's peace in the county aforesaid, without any proceedings being had before any one justice of the peace for the said county, whereas, in truth and in fact, the said C. O. did not procure and get the said warrant discharged, to the great damage, &c. to the evil example, &c. and against the peace, &c.—[*Second count, stating defendant to be a headborough.*]

That W. E. late of, &c. on, &c. with force and arms, at, &c. then being one of the headboroughs of the same parish, in the county aforesaid, by colour of his said office, unlawfully, unjustly, and extorsively, did exact, extort, receive, and have, of and from one F. J., widow, the sum of 5s. of lawful money of this realm, as and for a pretended fee of him the said W. E. for taking and arresting the said F. J. by virtue of a warrant of T. R. esquire, one of the justices of our said lord the king, assigned, &c. [*as ante*, 182] directed to, &c. [*as in the warrant*] and for the obtaining and discharging of the same warrant, as the said W. E. did then allege; whereas, in truth and in fact, no fee whatever (*b*) was then due to the said W. E. in that behalf, to the great damage of the said F. J. to the evil example, &c. and against the peace, &c.

Against a headborough for extortion (*a*).

That A. F. late of, &c. on, &c. at, &c. then and there being one of the constables of the same parish, did take and arrest one N. L. spinster, by colour of a certain warrant, commonly called a bench warrant, which he, the said A. F. then and there had to apprehend the said N. L., to answer to a certain trespass and assault, whereof the said N. then stood indicted, as the said A. F. then and there alleged and pretended; and the said A. F. her, the said N. then and there had in his custody, and that the said A. F. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, unlawfully, corruptly, deceitfully, and extorsively, for the sake of gain, and contrary to the duty of his said office, did extort, receive, and take, of and from the

Against a constable for extorting money of a person apprehended by him on a bench warrant to let her go, without carrying her before any justice of the peace (*c*).

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(*a*) See precedents, Cro. C. C. 7th ed. 356. 2 Stark. 588, ante, 293, note (*a*).

(*b*) In Cro. C. C. 7th ed. 356, the words are, "no such fee".

(*c*) See form, Cro. C. C. 7th edit. 357. 2 Stark. 585, ante, 293, note (*a*).

said N., the sum of 5s. of lawful money of Great Britain, for discharging the said N. out of the custody of him the said A. F. without conveying her before any justice of the peace for the said county, to answer the said trespass and assault, whereof she was supposed to stand indicted as aforesaid, to the great damage of the said N. to the evil example, &c. and against the peace, &c.

Against a bailiff
of a hundred (a).

That A. B. late of, &c. being bailiff of the hundred of A—, in the said county, on, &c. at, &c. by pretext and colour of his said office, did, unjustly, and by extortion, take and extort 5s. of one A. I. of, &c. one of the freeholders qualified to serve upon juries in the said county, to excuse the said A. I. from attending or appearing at the assizes that were then next to be holden in and for the said county, when, in fact, the said A. I. was not returned by the sheriff of the said county, in any panel of jurors; and also, when indeed no such sum of money was due to the said A. B. for his fee for excusing the attendance or appearance of the said A. I. at the assizes aforesaid, to the evil example, &c. to the great damage of him the said A. I. and against the peace, &c.

Against a tipstaff
to a judge of the
court of King's
Bench, for ex-
tortion (b).

That A. L. late of, &c. on, &c. at, &c. aforesaid, unlawfully, unjustly, and extorsively did exact and receive of and from one R. H. two pieces of gold coin of the proper coin of this kingdom, called guineas, of the value of forty-two shillings, under colour and pretence of being tipstaff to the right honorable W. earl of M. then chief justice of our said lord the king, assigned to hold pleas in the court of our lord the king, before the king himself, under colour and pretence of a fee due to him the said A. for not carrying the said R. H. to prison, after he had taken and arrested him the said R. H. by virtue of a warrant under the hand and seal of the said W. earl of M. chief justice aforesaid, issued forth against the said R. H. to answer to an indictment then before found against the said R. H. at the general quarter session of the peace held for the county aforesaid, for an assault upon A. A. as the said A. L. then and there alleged to the said R. H. whereas in truth and in fact, no such fee was then due to

(a) See this form, Burn, J. 358. 2 Stark. 585, ante, 293, Extortion. Ante, 293, note (a). note (a).

(b) See Cro. C. C. 7th ed.

the said A. L. in that behalf, to the great damage of the said R. H., to the evil example, &c. and against the peace, &c.

That A. B. late of, &c. and continually afterwards, until the day of exhibiting this information (or until the day of the taking this inquisition, if by indictment) was and yet is keeper of the prison of our said lord the king, of —, at, &c. in the county of —, and the office of keeper of the said prison at the parish aforesaid, in the county aforesaid, during the whole of the time aforesaid, took upon himself, exercised, and had, and still undertakes, exercises, and has; yet the said A. B. not regarding the duty of the said office, but abusing the trust in him reposed, and contriving and intending the liege subjects of our said lord the king, for his private gain, to oppress, impoverish, and greatly harass, and the due execution of justice, as much as in him lay, to retard and obstruct, on, &c. at, &c. under colour of his office as keeper of the said gaol, unlawfully, unjustly, and extorsively did exact, obtain, and have, and into his hands and custody receive, from one E. O. the sum of 2s. 4d. for charging one A. H. esquire, then a prisoner in the said prison, and in the custody of him the said A. B. with an action for £200, prosecuted at the suit of him the said E. O.; and that he the said A. B. on, &c. at, &c.* under colour of his office as keeper of the said gaol, unlawfully, unjustly, and extorsively did exact, receive, and have, and into his hands and possession obtain from one H. M. two pieces of gold, commonly called guineas, each piece thereof being lawful money, &c. and of the value, &c. * * for ease and favor, to and for relieving and releasing one B. D. from his irons, he the said B. D. then and there being a prisoner in the said gaol, and in the custody of the said A. B. detained for a felony and murder, before then, by the said B. D. supposed to have been committed, and that the said A. B. on, &c. at, &c. [*as before, from * to * **] for the discharging of the said P. P. from the said prison, out of the custody of the said A. B. although in truth and in fact no such sum was due to the said A. B. upon such discharge. And whereas also one I. T. and T. K. on, &c. at, &c. in the night of the said day had been taken and apprehended by one T. H. then constable of the said last-mentioned parish, then and there being upon his watch, as malefactors, night walkers, and sus-

Against a gaoler for extortion in office, and permitting an escape (a).

(a) Trem. P. C. 111. Stark. 538. See form, ante, 180, and ante, 293, n. (a).

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picious persons, and by the said constable had been there taken and conveyed to the said prison, and committed and delivered into the custody of the said A. B. by him in the same prison, to be safely kept until the said persons so taken and committed at a convenient time, the next day could be taken before some justice assigned to keep the peace of our said lord the king, within the county aforesaid, to be examined and dealt with according to law, and that he the said A. B. then and there had and detained the said I. T. and T. R. in the said prison, in his custody, and then and there undertook to keep them in manner and for the end aforesaid, yet the said A. B. afterwards and before the said I. T. and T. K. had been or could have been brought before any justice, to wit, on, &c. at, &c. voluntarily and unlawfully, and without any legal warrant or authority discharged and dismissed the said I. T. and T. K. out of his custody, by means whereof the said malefactors escaped without punishment, contrary to his duty in the execution of the said office, to the great scandal, disgrace, and obstruction of justice, to the great damage, grievance, oppression, and ruin of many of the subjects of our said lord the king, and against the peace, &c.

Against a marshalsea-court officer for extortion, in his charge for keeping a prisoner in his own house, instead of taking him to gaol (*a*).

That A. Y. late of, &c. on, &c. (the said A. Y. then being one of the bearers of the verge of the household of our said lord the king, and an officer and minister of the court of our said lord the king, of his parish of Westminster) at, &c. aforesaid, unlawfully, unjustly, and extorsively, and by colour of his said office, did extort, receive, and have, of one T. E. the sum of eighteen shillings of lawful money of Great Britain, for the fee of him the said A. Y. for keeping the said T. E. in the house of him the said A. Y. situate in, &c. aforesaid, and not conveying him the said T. E. to the prison of our said lord the king, called the Marshalsea, in Southwark, in the county of Surrey, after he the said A. Y. had arrested the said T. E. by virtue of a certain writ of our said lord the king, called a marshal's court writ, issued out of the said court of our said lord the king, under the seal of the same court, bearing date, &c. and returnable in the same court, on, &c. then next following, to answer D. D. of a plea of trespass on the case, to his damage, of ninety-nine shillings, (as the said A. Y. then and there did allege) whereas in truth and in fact no fee whatever, to the

(*a*) See form, Cro. C. C. 7th edit. 359. 8th edit. 194; and ante, 293, n. (*a*).

said A. Y. in that respect was then due or payable, to the great damage of the said T. E., to the evil example, &c. and against the peace, &c.

That J. N. late of, &c. on, &c. then being one of the bailiffs of the sheriffs of the said county of W. at H. &c. aforesaid, by colour of his said office, unlawfully, unjustly, and extorsively did exact, extort, and receive, of and from the Rev. J. N. clerk, rector of the parish of B. in the said county of W. the sum of one pound seven shillings and eight pence, for a pretended fee of him the said J. for executing a certain writ, which was issued out, on, &c. before the barons of his Exchequer, at W. in the said county of M. directed to the sheriff of the said county of W. by which said writ the said sheriff was commanded, among other things, to attach, &c. [*here set out the writ*], whereas in truth and in fact, no such fee was then due to the said J. in that behalf, to the great damage, &c. to the evil example, &c. and against the peace, &c.

Against a bailiff for extorting a fee for an attachment against a rector for non-payment of tenths (a).

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That E. R. late of, &c. on, &c. at, &c. aforesaid, under colour of being servant and agent to T. R. and C. P. esquire, clerk of the market of the household of our said lord the king, unlawfully, unjustly, and extorsively did demand, receive, and have, of one W. C. the sum of fourteen pence of lawful money of Great Britain, for and as a fee for examining, marking, and sealing of five quart pots made of pewter, seven pint pots made of pewter, and two half-pint pots made of pewter, whereas in truth and in fact there was then no such fee due to the said T. R. and C. P. the said clerk of the market of the household of our said lord the king in that behalf, to the great damage and oppression of the said W. C. and against the peace, &c.

Against a servant of a clerk of the market for extortion (b).

That D. S. late of, &c. labourer, otherwise called G. S. late of the same, labourer, by colour of being collector and receiver of the monies and tolls at a certain turnpike or toll-bar gate, situate in, &c. aforesaid, on, &c. with force and arms,

Against a toll collector for extortion (c).

(a) See form, 4 Wentw. 147, and ante, 293, n. (a).

(b) See precedents, Cro. C. C. 7th edit. 355. 2 Stark. 586. The corresponding precedent in Cro. C. C. 8th edit. 193, is an indictment against the clerk

himself, and omits the allegation "by colour," &c. see also ante, 293, n. (a).

(c) On this indictment defendant was convicted, A. D. 1807.

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at, &c. aforesaid, unlawfully, extorsively, and deceitfully, and of his own wrong extorted, exacted, asked, demanded, received, and had, of one A. S. spinster, the sum of three shillings and sixpence for two horses, that is to say, one shilling and ninepence for each of two horses, then and there drawing a certain carriage belonging to J. S. of, &c. esquire, for permitting the same to pass through the said turnpike or toll-bar gate, under colour and pretence that the said J. S. had neglected to take, and did not then and there leave with him the said D. S. otherwise G. S. such a note or certificate as is required for post horses hired for two days or more, by a certain act of parliament passed in the 25th year of the reign of our said lord the king, intituled, &c. whereas in truth and in fact the said two horses, then and there used by him the said J. S. were not horses for which such note or certificate, as in the said mentioned act specified, was required, nor was any such note or certificate necessary to be taken for the same, to the evil example, &c. and against the peace, &c.

Against two collectors of taxes for extorting money under colour of their office (a).

That on, &c. J. A. late of L. in the borough aforesaid, linen-draper, and W. B. late of L. aforesaid, in the borough aforesaid, grocer, there being collectors of several sums assessed upon the inhabitants of a certain liberty called L. upper division within the borough aforesaid, mentioned and expressed in a certain assessment made and confirmed in pursuance of a certain act of parliament made in the first year of the reign of our said lady the now queen of England, &c. intituled, "An act for granting an aid to her majesty by divers subsidies and a land-tax;" the said J. A. and W. B. on, &c. at, &c. aforesaid, in the borough aforesaid, by colour of the office aforesaid, unlawfully, extorsively, and deceitfully, and of their own wrong, exacted, received, and had, of one T. C. then of L. aforesaid, in the borough aforesaid, (being not assessed at all by virtue of the act of parliament aforesaid), the sum of four shillings, under colour and pretence that he the said T. C. had been assessed under the said act, and was then and there liable, by virtue of such assessment, to pay to them the said sum, and that the said J. A. and W. B. the same sum of four shillings so as aforesaid, of the said T. C. unlawfully, extorsively and deceitfully exacted, received, and had, and to the proper use of them the said J. A. and W. B. then and there

(a) See form, Cro. C. C. 8th ed. 195. 3 Ld. Raym. 61. Ante, 293, note (a).

unlawfully, injuriously, and deceitfully converted, whereas in truth and in fact the said T. C. had not been assessed under the said act, nor was liable to pay any sum of money whatsoever to them the said J. A. and W. B. as such collectors as aforesaid, or otherwise howsoever, to the great damage, &c. to the evil example, &c. and against the peace, &c.

That W. N. late of, &c. (the said parish of S. being the usual place of abode of him the said W. N.) on, &c. then being one of the coroners of our said lord the king, for the county of G. at, &c. aforesaid, by colour of his said office, unlawfully and unjustly did demand, extort, receive, and take, of and from one R. S. the sum of fifty shillings of lawful money of Great Britain, for and as his fee for executing and doing of his office aforesaid, to wit, upon the view of the body of one J. C. late of Stow-in-the-Wold, in the said county of Gloucester, glazier, who at, &c. aforesaid, on the day and year above mentioned, was slain by misadventure, and there lay dead; in contempt, &c. to the great damage of the said R. S., against the form of the statutes in such case made and provided, and against the peace, &c.

Against a coroner
for a misdemean-
or in extortion
(a).

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(a) See precedents, Cro. C. C. 7th edit. 353. 2 Stark. 587. Ante, 293, n. (a); and as to the law, Imp. Office Coroner, 438, last edition. Bla. Com. by Chitty, page 1. The statute 3 Ed. 1. c. 10, prohibits coroners from taking any thing to do their office, upon pain of great forfeiture to the king. By 3 Hen. 7. c. 1, they are allowed 13s. 4d., and on taking an inquisition on the body of a party murdered, from the goods of the murderer, and if he has nothing, from the amercements of the township for the escape of the felon. But by 1 Hen. 8. c. 7. s. 1. they are forbidden to take any thing where the death occurred from accident. Their fees have been finally settled by 25 Geo. 2. c. 29, which gives them twenty shillings for every inquisition, and allows them nine pence for every mile they

are obliged to travel from their usual places of abode, to be paid out of the county rates, s. 1. And by s. 4, of the same statute, it is enacted, that no coroner shall, by colour of his office, or upon any pretext whatsoever, take for his office doing, in case of the death of any person, any fee or reward other than the said fee of 13s. 4d. limited as is aforesaid, by the said act, made in the third year of the reign of king Henry the Seventh, and other than the recompence limited and appointed by this statute, upon pain of being guilty of extortion. And by s. 6, a coroner, convicted of extortion or wilful neglect of his duty, or misdemeanor in office, may be removed from office by judgment of the court in which he is convicted, unless such office be annual, or annexed to some other office.

CHAPTER IX.

OF INDICTMENTS FOR PERJURY AT COMMON
LAW, AND ON STATUTE 5 ELIZ. c. 9; FOR SUB-
ORNATION OF PERJURY, AND FOR PER-
JURIES MADE FELONIES BY STATUTE^(a).

PRELIMINARY NOTES AS TO THE OFFENCE, PROCESS,
INDICTMENT, EVIDENCE, AND PUNISHMENT.

I. AT COMMON LAW.

Offence of per-
jury at common
law.

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AS to the offence. Perjury, at common law, is defined to be “a wilful false oath by one, who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter material to the point in question, whether he be believed or not,” Hawk. b. 1. c. 69. s. 1. In order, therefore, to constitute the legal guilt of perjury, the oath must be false, the intention wilful, the proceedings judicial, the party lawfully sworn, the assertion absolute, and the falsehood material to the matter in question.

1st. *The oath must be false.* By this it is intended that the party must believe that what he is swearing is fictitious; for it is said, that if, intending to deceive, he asserts of his own knowledge, that which may happen to be true, without any knowledge of the fact, he is equally criminal, and the accidental truth of his evidence will not excuse him, Palm. 294. 3 Inst. 166. Hawk. b. 1. c. 69. s. 6.

(a) As to this offence in general, see 3 Inst. 163 to 168. Hawk. b. 1. c. 69. Com. Dig. tit. Justices of Peace, B. 102 to 106. Bac. Abr. Perjury, 4 Bl. Com. 137 to 139. Burn, J. Perjury. Williams, J. Perjury. Dick. J. Perjury. This

is one of the greatest and most immediate offences against public justice. On account of the length of the notes and number of precedents, it has been considered better to print this matter in a distinct chapter.

2dly. *The intention must be wilful.* The oath must be taken and the falsehood asserted with deliberation and a consciousness of the nature of the statement made; for if it seems rather to have been occasioned by inadvertency or surprise, or a mistake in the import of the question, the party will not be subjected to those penalties which a corrupt motive alone can deserve. Hawk. b. 1. c. 69. s. 2. 2 Russ. 1759. 1753. 1 Leach, 327. 5 Mod. 350. 10 Mod. 295.

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3rdly. *The proceedings must be judicial.* It is, however, agreed that all false oaths which are taken before those who are, in any way, entrusted with the administration of justice, in respect of any matter regularly before them are perjuries, Hawk. b. 1. c. 69. s. 3. And therefore it is indictable not only to swear falsely in a court of record, but also in any court of equity, 1 Leach, 50. 1 Sid. 418; any ecclesiastical court, Cro. Eliz. 609; and any other lawful court, whether it be of record or otherwise, Hawk. b. 1. c. 69. s. 3. So a false oath subjects the offender to all the penalties of perjury, though it be taken in a stage of the proceedings when it does not influence the final judgment, but only affects some intermediate step to be taken; thus, if a man offering to bail another swears his property to be greater than it is, in order to be received as a surety, Cro. Car. 146; or if he swears falsely before a magistrate to induce him to compel another to find sureties for the peace, Hawk. b. 1. c. 69. s. 3. 1 Campb. 404; or where a person forswears himself before commissioners appointed by the king to inquire of forfeitures of estates, &c. whereby he renders them liable to be seized by exchequer process, Noy, 100; or before persons appointed by the king to inquire of defective titles in order to remedy them by his patent, he is guilty of an indictable offence, though, in the latter case, rather as a misdemeanor abusing the purposes of the crown than as a regular and legal perjury, Hob. 62. It is also perjury to swear falsely before a sheriff on a writ of inquiry for assessment of damages, Hawk. b. 1. c. 69. s. 3; in an affidavit to hold to bail, Peake, N. P. 112; in obtaining a marriage licence at Doctors Commons, 1 Leach, 63; in obtaining administration to a seaman, 1 Leach, 327; in taking the oath as a voter at an election, 6 East, 323. 2 Campb. 135. 2 Smith, 526; and before a committee of the House of Commons, who are invested with the power of administering oaths to the witnesses before them by 10 Geo. 3. c. 16. s. 18. But no oath made in a mere private concern, however malicious or wilful, as in entering into

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a contract, is an indictable offence, but can only be redressed in an action for the individual injury; nor can any criminal proceeding be maintained for the violation of an oath taken, however solemnly, to perform any duties in future, though the offence will be highly aggravated by the breach of an obligation so sacred, 3 Inst. 166. 11 Coke, 98. Neither can any prosecution be supported for perjury in a voluntary affidavit taken extrajudicially before a magistrate, 4 Bla. Com. 137; and even where an oath is required by act of parliament in an extrajudicial proceeding, the breach of that obligation does not seem to amount to perjury, unless the statute contain an express provision to that effect, 4 Bla. Com. 137. Christian's edit. note (5). and it has been doubted whether an indictment lies for perjury in a deposition taken *de bene esse*, 1 P. W. 568. An indictment for perjury is not maintainable when the perjury assigned was committed on a trial of a cause where a co-plaintiff died after issue joined, but such death was not suggested on the record, the trial being thereby extrajudicial, 1 Stark. Rep. 511. It is remarkable that the House of Commons have no power to administer an oath, except in a few particular instances, where that power is granted to them by express enactment, as in cases of election petitions, &c. and see the supposed reason, 4 Bla. Com. c. 10, in note.

4thly. *The party must be lawfully sworn.* The person by whom the oath is administered must have competent authority to receive it. And, therefore, no false swearing before individuals acting merely in a private capacity, or before officers who have no legal jurisdiction to administer the particular oath in question will amount to the offence of perjury, 3 Inst. 166. Cro. C. C. 7th edit. 626. It seems indeed that he who administers an oath without warrant of law, is punishable though he may happen to be a magistrate, see 4 Bla. Com. 137. Wood's Inst. 435. And though the officer stands colourably in the situation which confers a power of receiving an oath on such an occasion, if in fact he is not duly appointed, the proceedings will be of no avail, *id. ibid.* 3 Campb. 432. Wood's Inst. 435; for though it is sufficient *primâ facie* to show the ostensible capacity in which he acted when the oath was taken, the presumption may be rebutted by other evidence, and the defendant, if he succeed, will be entitled to an acquittal, 3 Campb. 432; see *id.* 96. But a false oath taken before persons, who being originally commissioned to examine witnesses, happen to proceed after the demise of the king from whom their commis-

sion proceeded, and before they had notice of that fact, may, it is said, be indicted for perjury, Cro. Car. 97, 8, 9; sed quære. To make false swearing perjury it is not necessary that the oath should have been taken as a witness for another, but may be upon an affidavit or in answer to questions in a court of law or equity, or respecting some collateral matter in some way affecting a judicial proceeding, 1 Leach, 50. Hawk. b. 1. c. 69. s. 5. A party may be indicted for perjury though he have not complied with the rules and orders of a court, which are merely directory; and therefore where a party swore falsely in an affidavit which could not, from certain omissions in the jurat, be received in the court in which it was sworn, it was held he was indictable, the perjury being complete at the time of swearing, 1 Ry. & M. Rep. 94.

5thly. *The assertion must be absolute.* It was formerly laid down, that the witness must give his evidence absolutely and directly, and, therefore, if he only stated that he thought, remembered, or believed that which afterwards is proved to be false, he could not be indicted for perjury, 3 Inst. 166. 1 Leach, 325. But it seems now to be quite settled, that if a man swears that he *believes* that to be true which he knows to be false, he swears as absolutely, and is as criminal, in point of law, as if he had made a positive assertion that the fact was as he swore he believed it to be, 3 Wils. 427. 2 Bla. Rep. 881. 1 Leach, 242. Hawk. b. 1. c. 69. s. 7. n. a. The false swearing, however, as to the legal operation of a deed is not indictable, 1 Esp. Rep. 280.

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6thly. *The falsehood must be material to the matter in question;* for if it be of no importance, though false, it will not be perjury; for, as it does not concern the issue, it is extrajudicial in this respect, 3 Inst. 167. 8 Ves. 35. Peake Rep. 138. Cro. Eliz. 428. 4 Bla. Com. 137. Ld. Raym. 257. 889. Holt, 535. 1 Term Rep. 67. 69. And it always lies on the prosecutor to prove that the perjury was material, *id. ib.* Hawk. b. 1. c. 69. s. 8. n. (3). In the application of this rule some difficulty seems to have arisen. It is, however, clear that if the subject-matter is entirely foreign to the purpose, not tending either to extenuate or increase the damages or the guilt, nor likely to induce the jury to give a more easy credit to the substantial part of the evidence, the party will not be liable to an indictment, Hawk. b. 1. c. 69. s. 8. It is indeed urged by Hawkins, with great appearance of truth, that this

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must be intended where the question is put in such a manner that the witness might reasonably apprehend that the sole design of putting it was to acquire information on the substantial part which might induce him, through inadvertency, to take no notice of the circumstantial part of his story, for he argues that the minuteness of a narrative is frequently a great inducement with a jury to give it credit, Hawk. b. 1. c. 69. s. 8. Something perhaps might be urged against this reasoning; it seems to put the legal guilt of perjury on a wrong footing by confounding it with the moral; and indeed does away entirely the distinction between material and immaterial averments, and sets aside the rule the author has just before endeavoured to establish; for it goes to prove that every man is legally guilty of perjury, when he swears falsely before a competent officer, and confounds the impertinency of the false evidence with the absence of an intention of deceiving; we have already seen, that where there is no intention to mislead, even though the false statement be ever so material, the party cannot be punishable, because the perjury loses all its legal guilt by the absence of a bad design. To resolve one established rule into another is rather suspicious. It is however, more easy to decide on each particular case than to establish any general principle. To swear falsely as to the character of a witness is sufficiently material, Com. Rep. 43. 1 Ld. Raym. 258. And in general it is sufficient if the matter be circumstantially material to the issue, or affect the ultimate decision, 1 Ld. Raym. 258. 2 Id. 889. 2 Roll. Rep. 369. Thus perjury may be committed by falsely swearing that another witness is entitled to credit if such assertion conduce to the proof of the point in issue, 1 Ld. Raym. 258. And it is certain, that there is no necessity that the false evidence should be sufficient to render the party on whose behalf it is given successful, but it will suffice if that is its evident tendency, 2 Ld. Raym. 889; or in a civil action it has the effect of increasing or extenuating the damages, *comme semble*, Wood's Inst. 435. In a late case in an indictment for perjury in an answer in Chancery, to a bill filed against the defendant for the specific performance of an agreement relating to the purchase of land, the defendant had relied on the statute of frauds (the agreement not being in writing) and had also denied having ever entered into such an agreement, and upon this denial he was indicted, but it was held, that the denial of an agreement, which by the statute of frauds was not binding on the parties, was immaterial and irrelevant, and not indictable. 1 Ry. & M. 109.

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To constitute perjury at common law, it is not necessary that the false oath should obtain any credit, or occasion any actual injury to the party against whom the evidence is given; for the prosecution is not grounded on the inconvenience which an individual may sustain, but on the abuse and insult to public justice, 2 Leon. 211. 3 Leon. 230. 7 T. R. 315.

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In some cases, where a false oath has been taken, the party may be prosecuted by indictment at common law, though the offence may not amount to perjury. Thus it appears to have been holden, that any person making or knowingly using any false affidavit taken abroad, (though a perjury could not be assigned on it here) in order to mislead our courts of justice, is punishable as a misdemeanor; and Lord Ellenborough, C. J. said, "that he had not the least doubt that any person making use of a false instrument, in order to prevent the due course of justice, was guilty of an offence punishable by indictment, 8 East, 364. 2 Russ. 1759.

PROCESS.—Though there does not seem to be any difference in the power of magistrates and judges to issue their warrants in cases of misdemeanor, and they have therefore a power so to do in perjury, as well as in other cases (see vol. i. p. 13, 14) in the practice of the London police offices, no warrant is usually granted to apprehend a party accused of this offence, before an indictment has been found against him. But by 23 Geo. 2. c. 11, any justice of assize, *nisi prius*, gaol delivery, or of a court of great sessions in Wales or a county palatine, is authorized during the sitting of the court, or within twenty-four hours after its rising, to direct any person examined as a witness upon a trial before him, to be prosecuted for perjury, and to assign the party injured, or other person undertaking to conduct the prosecution, counsel, who must discharge their duty without remuneration. Proceedings thus instituted are also, by the same act, exempted from taxes, duties, and fees of court, by a certificate which the clerk of assize, &c. must give to the person selected to conduct them. Justices of the peace have no jurisdiction over perjury at common law, though they have under the statute; it is, therefore, most usual to commence prosecutions for this offence in the King's Bench, or at the assizes, Hawk. b. 1. c. 69. s. 14. n. 5; and *id.* b. 2. c. 8. s. 38. Ante, vol. i. 139, 140. 2 Stra. 1088. 1 Salk. 406.

Process.

Indictment for perjury at common law.

How to frame in general.

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INDICTMENT.—In former times, indictments for perjury were exceedingly prolix and dangerous. Thus an information on the statute of Elizabeth, set forth the statute itself, the pleadings in an action of ejectment, the issue joined, the proceedings on the trial, the whole evidence, and the assignment of perjury upon it. Co. Ent. Inform. 367. But, in order to facilitate prosecutions for perjury, which have frequently been unsuccessful, in consequence of formal defects, it was enacted by 23 Geo. 2. c. 11. that in every indictment and information for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath was taken, (averring such court, or person or persons to have a competent authority to administer the same) together with the proper averment or averments, to falsify the matter or matters wherein the perjury or perjuries is or are assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court or “person or persons before whom the perjury was committed.” See observations on the statute, 5 T. R. 317. 2 M. & S. 385. 2 Russ. 1780. and a clear and succinct summary of the usual parts of an indictment for this offence. 2 Leach, 859, 60. It is usual, however, to set forth so much at least of the matter sworn, as is alleged to be untrue, in order to render the assignment of perjury intelligible and consistent; beyond this, it is certainly advisable to take advantage of this statute, which Lord Kenyon regretted so few prosecutors seemed inclined to observe. 5 T. R. 317. and the court will censure unnecessary prolixity, as setting out continuances in the former prosecution, and make the party pay the expence, 1 Leach, 201. The statute requires only the substance of the offence, the name of the court, a simple averment of the court’s authority to administer the oath, and proper averments of the falsity of the defendant’s assertions. The substance of the charge is intended in opposition to its details; and, therefore, it is sufficient if all the circumstances, necessary to describe and render it intelligible in its legal requisites, appear on the face of the proceedings, 5 T. R. 318. It is advisable to insert several counts if the defendant swears falsely to several distinct material questions, 2 Campb. 139.

Inducements.

In framing an indictment for perjury, some *inducement* is necessary, in order to render the assignments of perjury intel-

ligible, where they would otherwise be ambiguous and require explanation. In setting out this inducement, the above statute should be attended to, and no more than is absolutely necessary to explain the assignment of perjury should be stated. Thus it is sufficient to state that a certain cause had arisen, and was depending, and came on to be tried in due form of law; or that at such a court I. K. was in due form of law tried on a certain indictment then and there depending against him, for murder, and that the perjury was committed on the trial either of the civil or criminal proceeding, 5 T. R. 318. Cro. C. C. 7th ed. 612, n. a. It is unnecessary to set out the continuances of the former prosecution, 1 Leach, 201, or to state out of what office process issued, in case of perjury, on a bill of Middlesex, though, if a wrong office be stated, the indictment would be defective, Peake N. P. 112. Cro. C. C. 339. 356; and where a complaint was made ore tenus, by a solicitor to the Court of Chancery, of an arrest in returning home after the hearing of a cause, it was holden sufficient to state, that "at and upon the hearing of the said complaint the defendant swore, &c." and there was no occasion for any positive averment of the hearing of the application, 1 T. R. 74. A variance in setting out this matter of inducement would be fatal if the matter stated could not be rejected as surplusage, as to what is surplusage; see 1 Chitty on Pleading, 4th edit. 196. 261. 334; and post, page 334. As above observed, if in an indictment for perjury on a bill of Middlesex, the office out of which such bill issued be mis-stated, it would be fatal, Peake N. P. 112. Cro. C. C. 339. 356. but a mere clerical error will be no variance, 5 T. R. 311. 2 Camp. 139. 1 Leach, 192. 1 Camp. 404. 1 Esp. Rep. 97. 9 East, 137. 1 Lord Raym. 701. 13 East, 547. however, where the indictment purporting to set out the substance and effect of the bill stated an agreement between the prosecutor and defendant respecting *houses*; and, upon the bill being read, the word *house* was in the singular number, the variance was held fatal, 1 Ry. & M. 98.

INDICTMENT.

It is undoubtedly necessary that it should appear on the face of the indictment that the false allegations were *material* to the matter in issue, 1 T. R. 69. 5 T. R. 318. Comb. 461. Cro. Eliz. 428. Com. Rep. 43. 8 Ves. 35. 2 Bridgman's Index, 395. 2 Ld. Raym. 889. Holt, 535. Cro. C. C. 7th edit. 613, n. a. 1 Ry. & M. Rep. 147. The King v. Bignold, K. B. A. D. 1824. But it is not requisite to set forth all the circumstances which render them material; the simple averment that

Statement of materiality.

INDICTMENT. they became and were so, will suffice, 5 T. R. 318, see *Ld. Raym.* 889. though it will be proper to state any circumstance to which the assignment of perjury must afterwards refer, 1 T. R. 66. On the other hand it should seem, that if the materiality of the question evidently appears on the record, as where the falsehood affects the very circumstance of innocence or guilt, or where the perjury is assigned on documents from the recital of which it is evident that the perjury was important, the express allegation may with safety be omitted. See *Trem. P. C.* 139, &c. and 7 T. R. 315. 2 Stark. C. L. 423, n. The averment of materiality usually precedes the statement of the occasion of administering the oath, and the following concise statement would, it should seem, in all cases suffice: "And the jurors aforesaid, on their oath aforesaid, do further present, that upon the said trial (or upon the hearing of the said rule, &c. according to the fact) it became and was material to ascertain the truth of the matter hereinafter alleged to have been sworn to, and stated by the said C.D. upon his oath."

Statement of occasion of administering oath.

[*The occasion of the administering the oath* should be stated with accuracy.] In a case where the oath was alleged to have been taken, and the matter sworn by the defendant before the honorable E. W. one of the justices of assize, &c.; and it appeared in evidence that the oath had in fact been taken before Willes, J. in a cause tried at the assizes, it was held to be sufficient, though another justice was mentioned in the indictment as a commissioner, and the *Nisi Prius* record alleged the trial to have been before both, *Leach*, 150, 3d ed. 179. 14 *East*, 218, n. a. and see 3 Stark. on Evid. 1136. where the indictment alleged that the cause came on to be tried before Lloyd, Lord Kenyon, &c. William Jones being associated, &c. and from the judgment roll it appeared that Roger Kenyon was associated, &c. the variance was held fatal, 1 *Esp. Rep.* 97, where the indictment alleged a bill of discovery filed in the Exchequer (in the answer to which perjury was assigned) to have been filed on a day specified, viz. 1st of December, 1807, and it appeared on the production of the bill to have been filed in the preceding Michaelmas Term, according to the practice of the court, where a bill is filed in vacation, it was held that the variance was immaterial, the day not having been alleged as part of the document, 1 Stark. Rep. 521, and where the perjury was assigned in answer to a bill alleged to have been filed in a particular term, and a copy produced was of a bill amended in a sub-

INDICTMENT.

sequent term by order of the court, it was held to be no variance, the amended bill being part of the original bill. 3 Stark. on Evid. 1138; and where an indictment for perjury assigned, on evidence given in the Palace Court, described the court as "the Court of the King's Palace, at Westminster," and it appeared from the record of the trial below, that it was called "the Court of the King's Palace of Westminster," it was held no variance, 3 D. & R. 234, and where the same indictment averred that the cause in which the alleged perjury was committed "came on to be tried, and was then and there duly tried by a jury of *the county*," and the record of the trial stated that the jury came of the neighbourhood of Westminster, it was held, that as the cause was in fact so tried, and no county being mentioned in the record, it was no objection, *id.* Where the bill was alleged to have been filed by Francis Cavendish Aberdeen, and others, and on the production of the bill it purported to have been filed by J. C. Aberdeen, and others, the variance was held to be immaterial, evidence being given that Francis Cavendish Aberdeen, and the other persons named, did in fact file the bill, although it was objected that it ought to have been averred in the indictment, that Francis Cavendish Aberdeen, &c. filed their bill by the names of J. C. Aberdeen, &c.; and although, after setting out the material parts of the bill, the words were added "*as appears by the said bill, filed of record*," 1 Stark. 518. 3 T.R. 601. 2 Campb. 139. Where an indictment for perjury, in setting out the record of a conviction, stated an adjournment to have been made *by Const, esq. and A. B. C. and D. and others their fellows, &c. justices*, and an examined copy of the record of conviction, when produced, stated the adjournment to have been made *by Const, esq. and E. F. G. and others, &c.* the variance was held fatal, unless the defect was supplied by evidence of an adjournment made by the persons stated in the indictment, 1 Ry. & M. 171. And where in an indictment for perjury in an answer to a bill in Chancery, the bill was described as exhibited against three persons only, when in fact it was against four, it was held that this was no variance, 1 Ry. & M. 101. It has been held, that though there be two counts in the original proceeding, yet an averment that an *issue* came on to be tried, will be no variance, Peake's Rep. 37.

In stating the *place* where the perjury was committed some place must be alleged, to which a venire may be reason- Statement of place where perjury committed.

INDICTMENT.

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ably awarded, and therefore to charge the offence "at the Guildhall of the city of London," will not suffice, unless some parish or ward be also inserted, though, in the case of any other city, it seems it would suffice. 2 Leach, 800. When the perjury is committed in a hall, situate within the limits of a city, which is a county in itself, on the trial of a cause before a jury of the county at large, the indictment may be found and tried at the assizes for the latter. Dougl. 791. And an indictment for perjury in an affidavit of an attorney, on a summary application against him, need not specify the place where the court was holden, to which the motion was originally addressed, but it will suffice, if a proper venue be laid to the fact of the actual perjury, 7 T. R. 315. A too general statement of place, absolutely to the fact of false swearing, cannot be aided by an innuendo expressing a parish, and containing a minute description of the place where it was taken, 1 Ld. Raym. 256. It suffices however to show, that the perjury was committed any where in the county, though at a different parish, or place, to that alleged in the indictment, unless there be a variance in some specific local description. Holt Rep. 534. Skin. 403. Upon an indictment in Middlesex, it may be shown that the oath was in fact taken in Middlesex, though the jurat state it to have been sworn in London, 9 East, 437. Ante, vol. i. 200, 1.

Statement of
authority of
court.

The statute 23 Geo. 2. c. 11. renders it unnecessary to set forth the commission, from which the *authority of the court* is derived, in which the perjury was committed. But it also makes it necessary to aver concisely, they had competent authority to administer the oath, which must therefore be pursued in every indictment for this offence. Dougl. 156.

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Statement that
defendant was
regularly sworn.

It must appear that the defendant was *regularly sworn*. But it will be sufficient if it be stated that he was in due manner sworn, though he took the oath according to the ceremonies of a particular religion, Peake, N. P. 155. 12 Vin. Ab. T. b. 28. 2 Keb. 314. And if he were sworn twice, first in the usual form, and afterwards after his own method, to state that he was sworn on the holy gospel of God will suffice, though had he been sworn only in the latter way, the variance would have been fatal, *id. ibid.* Cro. C. C. 7. *id.* 575, n. (c). It is not necessary to state that the justices, &c. were of the quorum, 26 Geo. 2. c. 27. It is not necessary to set out the jurat of the affidavit, 9 East, 437. nor need the affidavit be

stated, or proved to have been affiled in, or exhibited to the court, or in any other manner used by the defendant or others, 7 T. R. 315. INDICTMENT.

It is proper to aver that the defendant *falsely* swore, &c. 2 M. & S. 385, and if the same person swears contrary ways at different times it is necessary to aver on which occasion he swore wilfully, falsely, or corruptly, 5 Barn. & Ald. 926. 1 D. & R. 578. S. C. But in an indictment for perjury at common law, the word "wilfully," &c. is not necessary, it being implied from the words, "falsely, maliciously, wickedly, and corruptly." 1 Leach, 71. Statement that defendant *falsely* swore.

The *matter* on which the assignment of perjury is made need not be *prefaced* with the words, "to the tenor and effect following," or other expressions which compel an exact recital, but it should rather be "in substance, and to the effect following," 2 Campb. 138. Cro. C. C. 7th ed. 573, n. (a), and cases there cited, "or in manner and form following, that is to say," which allow of a greater latitude. (1 Leach, 192) And it seems to be sufficient to state that the defendant did *falsely* swear, &c. that, &c. Trem. P. C. 139. 1 T. R. 64. and then stating the precise words, with innuendoes, or the substance of what was sworn to; a variance, however, in the latter case, which alters the sense, will be fatal. 1 Leach, 133. And in an indictment for perjury in an affidavit, if a word were accidentally omitted in the original document it must not be supplied as if sworn, but the omissions must be explained by an innuendo, 1 Campb. 404, where Lord Ellenborough said, "the words ought to be set out exactly as sworn, and if there be any mistake, or ambiguity in the words of the oath, that can only be remedied by an innuendo;" and if in one count the whole of the defendant's evidence be set out continuously, it is reported to have been decided, that the prosecutor must prove it all, though the words "to the substance and effect following," are prefixed to the recital, 2 Campb. 134. In such case it is advisable to insert distinct counts on each material question and answer, 2 Campb. 139. So also, if in an indictment for perjury, before a committee of the House of Commons, on an election petition, it be stated, that A. B. and C. D. were returned to serve as burgesses for the said borough of New Malton, and the indenture, when produced, describes them as returned for Malton, without the epithet "New," the variance will be Statement of matter *falsely* sworn to.

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INDICTMENT. fatal. 2 Campb. 134. 141. But it would suffice to say that the election was had, "by virtue of a certain precept of the high sheriff of the county, by him duly issued to the bailiff of the said borough of New Malton," though the precept varied, because it is said not to be matter of description. 2 Campb. 140.

Innuendoes.

In setting forth the *matter* on the record, on which the assignment is made, as well as the perjury, it is frequently necessary to make use of innuendoes, in order to explain the meaning. An innuendo is defined to be a mode of explaining some matter already expressed; it serves to point out where there is precedent matter, but can never introduce a new charge; it may elucidate what is already averred, but cannot add, or enlarge, or alter its sense, 2 Salk. 513. 1 Ld. Raym. 256. 12 Mod. 139. 9 East, 95. It signifies nothing more than the words, "*id est*," "*scilicet*," or "meaning," or "aforesaid" as explanatory of a matter already sufficiently set forth; as C. D., (meaning the defendant,) or that subject, (meaning the subject in question.) Cowp. 684. And, therefore, if it is intended to explain any thing, the matter must first be put on the record for it to explain: thus the words, "he has burnt my barn," cannot by innuendo be taken to mean a barn full of corn, 4 Co. 20. a. but if it had been stated before by way of inducement, that the owner had a barn full of corn, and then the innuendo had referred to it as such, the meaning would have been complete, 1 Saund. 243, a. n. 4. See 1 Chit. on Plead. 4th ed. 344. And if any use be made of the innuendo which is thus imperfect, it cannot be rejected as surplusage, nor will it be cured by verdict, 1 Ld. Raym. 256. Thus if a place be named as N. and afterwards explained by innuendo, to mean N. in Devonshire, though, in the assignment of perjury, it be stated generally that the defendant was not at N. it will be taken to refer to the whole innuendo, and if that be defective, the error will be fatal, 1 Ld. Raym. 261. However, where the oath of the defendant was, that he had been arrested before he got to his own house, in the parish of St. Martin's in the Fields, an innuendo his house in the Hay-market, in St. Martin's, &c. is good, as only a more particular description of the same house: so an oath being, that the defendant was arrested upon the steps of his own door, an innuendo that it was the outer door, is good, 1 T. R. 70. But where the innuendo and the matter it introduces, are altogether impertinent and immaterial, it may be rejected as superfluous, 1 T. R. 65. 9 East, 93. See

3 Campb. 461. 7 Price, 544. In perjury, at common law, on an affidavit, it is not necessary to refer to the files of the court, or shew in what way it was afterwards used, for the guilt was complete as soon as the falsehood was pronounced and sanctioned by an oath, 7 T. R. 315. INDICTMENT.

The *assignment of perjury* consists of an express contradiction of the defendant's statement on oath, as explained by innuendoes, which will suffice, 1 T. R. 70. There can be no doubt that it is necessary to falsify, by averments in the indictment, those parts of the defendant's allegations on oath, in which it is intended to charge him on the trial with having committed the offence in question, 2 M. & S. 385 to 392. And this is necessary, where the party has sworn contrary ways at different times; and it must be expressly shewn, in such case, which was the false oath, 5 B. & A. 926. 1 D. & R. 578. S. C. These averments or assignments of perjury, as they are technically termed, should be specific and distinct, in order that the defendant may have notice of what he is to come prepared to defend, see *id. ibid.* and it would, therefore, be insufficient to aver generally and indefinitely that the defendant's oath was false. And where an indictment for perjury, committed in the Insolvent Debtors' Court, alleged that the defendant falsely, &c. swore "that his schedule presented to that court contained a full, true, and perfect account of all debts owing to him, whereas in truth and in fact the schedule did not contain a full, true, and perfect account of all debts owing to him," without specifying any debts omitted, it was held that this indictment was bad, 1 Ry. & M. 210. In many instances, however, the indictment may not be vitiated by the assignment being rather more comprehensive than the terms of the defendant's evidence. Thus if the defendant swore, "that he never did, at any time, during his transactions with the victualling-office, charge more than the usual sum per quarter, beyond the price he actually paid for any grain purchased by him for the said commissioners as their corn-factor," and this assertion be contradicted by an averment that "he did charge more than the usual sum per quarter, for and in respect of such malt or grain," the indictment will not be vitiated by the introduction of the words "and in respect of," *Rex v. Atkinson*, Cro. Circ. Assist. 437 to 451. Bac. Abr. Perjury, C. 1 Saund. 249, a. note 1. S. C. If there be several assignments of perjury in one count, it will suffice to prove one of them, and though some be bad, judgment will be given for the crown, on the sufficient assignments, Assignments of perjury.

INDICTMENT. 2 Ld. Raym. 886. 2 Campb. 138, 9. Cro. C. C. 7th ed. 622. The truth of the defendant's oath is usually negated in different ways, see forms, post, 319, &c. and when the defendant swears only to belief, it may be proper to aver "that he well knew" the contrary of what he swore, as in 4 Wentw. 231, and post, 320.

Conclusion. After the perjury has been assigned, the indictment usually *concludes* "that so the defendant did commit wilful and corrupt perjury," 2 Leach, 860. Stark. 195; but it should seem that this conclusion of law from the premises, is immaterial, see 2 Leach, 856. Ante, vol. i. 232.

Consequence of defect. The court will, in general, refuse to quash an indictment for perjury, however defective, and compel the defendant either to plead or demur, Hawk. b. 2. c. 25. s. 146. But it should seem that the court will, on motion, quash an indictment for perjury, for want of an addition to defendant's name, if the exception be properly taken, though they refused to quash such an indictment where the defendant produced no affidavit, giving his proper addition, 3 D. & R. 621. And a judge at nisi prius may refuse to try an indictment for perjury clearly bad in point of law, 1 Ry. & M. 147. 210. Nor will the court grant a certiorari to remove it, unless strong ground be shown for the application, Hawk. b. 2. c. 27. s. 28. And the Lord Chancellor will not grant leave to amend an answer in Chancery, where an indictment for perjury is even threatened, though the party, having no interest, could not be supposed to make the false oath with a corrupt design, 1 Bro. C. C. 419.

Evidence. **EVIDENCE.**—In perjury, the charge of the perjury itself, must be proved by two witnesses, 10 Mod. 194. Stra. 1230. 13 Ves. 134. 2 Bridgman's Index, 395. Ante, vol. i. 562, 3. 3 Stark. on Evid. 1144; because, if a person could be found guilty on the testimony of a single witness, there would only be one oath against another, 4 Bla. Com. 358; but see ante, vol. i. 562, 3. But where the defendant himself, in one part of his affidavit, states a fact, and afterwards, in another part, contradicts it, then one witness would be sufficient to prove the falsity of the statement first made; see 5 B. & A. 929, n. a. The party injured is a competent witness in a prosecution for perjury, Stra. 1230. 1104. 1042. 4 East, 581. 1 Salk. 283. Sed vide 4 Burr. 2255. Lord Raym. 396. Skin. 327. And it is not necessary that the party injured should

have satisfied the judgment in the suit in which the perjury was committed, 4 Burr. 2255. 4 East, 577. 1 Phil. on Evid. 119. On an indictment for perjury, in an answer to a bill for an injunction against a party, such party is a competent witness in the prosecution, 4 East, 572.

It is sufficient to prove in the first instance, that the *person before whom the oath was taken*, acted in the capacity of an officer fully capable of administering the oath, to raise a presumption that he had competent authority to receive it; for it is a general presumption of law, that an individual acting in a public capacity, is duly authorized so to do, 3 Campb. 433. 4 T. R. 366; and in *Rex v. Creswell*, 24th Dec. 1816, Lord Ellenborough recognized this doctrine, and admitted Dr. Adams, the Surrogate, swearing that he acted as surrogate, without producing his written authority; but the defendant is at liberty to rebut this *primâ facie* evidence, by positive testimony, that the appointment was defective; and if he succeed in so doing, he will be entitled to an acquittal, 3 Campb. 435. And in some cases, special facts must be proved to shew the existence of the authority, where it is of a special nature, and limited to particular circumstances. Therefore, on an indictment against a bankrupt, for perjury on his last examination before the commissioners, it is necessary to prove the bankruptcy, 3 Campb. 96; and see 1 Stark. Crim. Law, 511. 3 Stark. on Evid. 1135, 6. Though, indeed, such strict proof would not be required if the indictment were against a witness for perjury, before such commissioners, 3 Campb. 96.

With respect to proving *the occasion of administering the oath*, see 3 Stark. on Evid. 1136. Where perjury is assigned in an answer to a bill in equity, the bill must be proved in the ordinary manner; see Leach, 179, 3d ed. 2 D. & R. 348. Bul. N. P. 243, 4. On an indictment for perjury committed on the trial of a former cause, the *postea* alone is sufficient evidence to prove that there was a trial, without shewing a copy of the final judgment, Bul. N. P. 243. 2 P. W. 563. 4 State Tr. 265. Hardr. 118. Stra. 162. Hawk. b. 2. c. 46. s. 56. A variance in stating the occasion of the making the oath, would be fatal, see ante, 306, 7.

In proving *the taking of the oath*, it has been held in an indictment at common law for perjury, in an affidavit sworn before the court of K. B., that it is not necessary to prove that the

EVIDENCE. affidavit was filed or exhibited, or in any manner used by the party, 7 T. R. 315; but this is not so when the party is indicted under the statute of Elizabeth, Skin. 403. Where the perjury is assigned in an answer of the defendant in Chancery, the answer itself must be produced from the proper office, Bul. N. P. 239. Bac. Ab. Evid. 624. 3 Stark. on Evid. 1138; and, in an indictment for such perjury, it should be proved that the jurat is in the hand-writing of a master in Chancery, 2 Burr. 1189. 1 Leach, 50. 2 Campb. 508. 3 Mod. 116. Ld. Raym. 951. The identity of the party charged with the perjury should be clearly proved; this may be done as in other cases, see 1 Leach, 327. Phil. on Evid. tit. Identity. 3 Stark. 1139; it is a question for a jury; but evidence of a conclusive nature is requisite, in order to shew that the defendant was the person who took the oath, 3 Stark. on Evid. 1139. It is sufficient evidence of the identity of the prisoner with the party who actually took the oath in question, if his hand-writing be proved, 2 Burr. 1189. 1 Leach, 50. 3 Mod. 117.

It should be proved that the oath was taken within the county where the indictment is tried, Skin. 403. In an indictment for perjury in an answer to a bill in Chancery, the recital in the jurat of the place where the answer purports to be sworn, is sufficient proof that the oath was administered at the place named, 1 Ry. & M. 97. Upon an indictment in Middlesex it may be shewn that the oath was in fact taken in that county, though the jurat state it to have been sworn in another, 9 East, 437.

In proving the *perjury itself* it will suffice to shew that the defendant swore in substance and effect, as stated in the indictment. As to what is a variance, see ante, 309, 310, 311. 3 Stark. on Evid. 1141. When the perjury is set out continuously, it must be proved accordingly, although the count contains several distinct assignments of perjury, 2 Campb. 134; but this is not material unless the sense be altered. It has been held, that the prosecutor must prove the whole of the defendant's evidence, because he might in one part have corrected any mistake made in another, though when the perjury was committed on a cross-examination respecting a fact, not connected with the general merits of the case, proof of all the cross-examination will suffice, Peake, 37. 170. But it should seem that this doctrine of compelling the prosecutor to prove more than a *primâ facie* case to establish the defendant's guilt, is

an anomaly in the criminal law; for in general the party indicting is not bound to anticipate matters of defence, which it lies on the prisoner to bring forward. We have therefore seen, that it is not necessary to negative the exceptions in a distinct section of a statute, or to aver that the defendant had no excuse for the breach of any positive duty. Nor does it seem that in this case the party indicted would sustain hardship in being compelled to shew that he had corrected the part of his evidence assigned, as was done in 1 Sid. 418; and see further as to this, the observations of Mr. Starkie, in his Treatise on Evid. vol. iii. 1141, 2. The averments and innuendoes if material should be proved, if not, they may be rejected as surplusage, 1 Stark. C. L. 2d edit. 118. 1 T. R. 63. 9 East, 83. 95. Cro. Car. 489. Cro. Jac. 153. 3 Campb. 461. 7 Price, 544.

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As the perjury assigned must be material to the matter in question, so the *materiality* of the perjury *must be proved*, see ante, 304. 307. In an indictment for perjury in an answer to a bill in equity, the bill itself must be produced and proved, Leach, 179. So if the perjury assigned be in an affidavit, or other proceeding, subsequent, or in answer to some prior one, the prior affidavit or proceeding should be produced and proved; as, for instance, the rule nisi of the court, in answer to which the defendant's affidavit was made, Id. If the assignment be on evidence on the trial of a cause, in addition to the production of the record, the previous evidence and state of the cause should be proved, or at least so much of it as shews that the matter sworn to was material, 3 Stark. on Evid. 1143. When the perjury is committed in an answer to a bill in equity, or in answer to affidavits in a rule to shew cause, the materiality of the matter sworn to in such answer, and on which perjury is assigned, necessarily appear from the documents themselves; but where the perjury is assigned upon testimony given on the trial of a cause, evidence must be given in support of the averment of materiality. For this purpose it is not only necessary to shew by the record what issues were joined between the parties, but also to prove so much of what occurred at the trial as shews the bearing and materiality of the defendant's evidence, 3 Stark. on Evid. 1143. In an indictment for perjury (as in declaring on a libel), where there are several matters alleged as inducement, each bearing upon the matter falsely sworn to, and jointly constituting the perjury, the court will consider, in construing the subsequent averment

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of the perjury being committed, relating to such prefatory matter, the degree in which each matter bears upon the perjury assigned, and is essential to it. If the matter referred to by the averment be material, and affects the charge in such a manner that the omission of it would alter the character of the perjury assigned, either in the degree in which it is charged to be injurious, or in the degree of guilt, the court will hold it must be strictly proved, as it is charged, and the failure of proof, or the disproof of it, would be fatal. See Cowp. Rep. 72. 1 Chit. Rep. 603. 2 Stark. 510. 4 B. & A. 314. But where the matters referred to consist of several particulars, some of which are material, and others not, the court will distinguish between such as are material, and such as are not; and if any one particular be disproved, to which the perjury is alleged to relate, if the charge would remain entire, and constitute perjury, without such proof, the court will not consider it to be a variance. See 3 B. & C. 113. 4 D. & R. 670. S. C. from whence this general rule may be collected, that the statement of the perjury relating to antecedent matters, render it necessary to prove only such antecedent matters, as make up the entire charge, and are essential to the character of the perjury assigned.

The *corrupt intention* must also be proved; for it has been observed, that a jury ought not to convict where it is probable that the fact was owing rather to the weakness than the perverseness of the party, as where it was occasioned by surprize or inadvertency, or by mistake of the true state of the question. Hawk. b. 1. c. 69. 5 Mod. 350. 10 Mod. 295. Ante, 303. But it should seem this would be for defendant to shew, and prosecutor, by proving the falsity of the oath, would *primâ facie* make out a case that it was corruptly made.

For the defence, a party who is indicted separately with others, for perjury, in swearing to the same fact, either of them, before conviction, may be a witness on the trial of the others. Fortes. Rep. 247. 2 Roll. Ab. 685. 2 Hale P. C. 280. The defendant may prove that the matter sworn to falsely, was not sworn to corruptly, Ante, 303. Though perjury be assigned by the defendant in his answer, affidavit, or deposition, in writing; the defendant may prove that an explanation was afterwards given, qualifying or limiting the first answer, 3 Stark. on Evid. 1145, 6. Sid. 418. 2 Keb. 576.

PUNISHMENT.—See ante, vol. i. Index, tit. Perjury. The punishment for perjury at common law, is fine, imprisonment, and pillory, at the discretion of the court, before whom the offender is convicted; and now, by 3 Geo. 4. c. 114. hard labour may be added. It was anciently capital, afterwards banishment or cutting out of the tongue, 4 Harg. St. Tr. 103. the last of which penalties is one of the few instances of characteristic punishments which have been somewhat fancifully recommended by an ingenious modern writer. Instances, where this offence has been visited with very great severity, are to be found in times comparatively recent. Of these the judgments upon Titus Oates is the most remarkable. He was sentenced to pay a fine of 2000 marks—to be whipped from Aldgate to Newgate, and from Newgate to Tyburn; to be imprisoned for life, and to stand four times every year in the pillory, 4 Harg. St. Tr. 105, 6. But this judgment was declared to be unjust and illegal, and Oates was pardoned the residue of his punishment, 7 Harg. St. Tr. 455. 8 id. 476. When perjury has for its object the destruction of the life of another, it is a crime of as deep a dye as the most aggravated murder; for it aims not only to take away the life of its victim, but to cause his whole property to be forfeited, and his character to be covered with infamy. But the reason why, in this country, a capital punishment is not inflicted on a criminal stained with guilt so enormous, may be, that its denunciation would overawe and terrify witnesses, however honest, and restrain them from giving evidence in those cases where it is most needed, 4 Bla. Com. 96.—In addition, however, to the penalties of fine, imprisonment, and pillory, which, in their discretion, the judges have always been authorized to inflict, the 2 Geo. 2. c. 25, enables them to order the offender to be sent to the house of correction for a term not exceeding seven years, or to be transported for the same period, and makes it felony without benefit of clergy, in the convict to escape or return within the time to which his sentence extends. At the present day, as the punishment is thus discretionary, it necessarily varies according to the shades of atrocity with which each individual case is distinguished. There is another circumstance which attends all convictions for perjury, though it forms no part of the judgment at common law; the incapacity of the offender to bear testimony as a witness. See ante, vol. i. 599, 600. When the indictment is framed at common law, a pardon under the great seal restores the competency which the conviction

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PUNISHMENT. destroyed, 1 Vent. 349. 4 Harg. St. Tr. 682. 1 Esp. Rep. 94. But where the proceedings are grounded on 5 Eliz. c. 9. this cannot be done without a reversal of the judgment, because it is here made a part of the punishment prescribed, 1 Salk. 289. 5 Esp. Rep. 94. Ante, vol. i. 601, 2.

II. PERJURY ON STATUTE, 5 ELIZABETH, c. 9.

Offence of per-
jury, under
5 Eliz. c. 9

Offence. The 5 Eliz. c. 9. s. 6. after directing the punishment for subornation (see post, 317, 18.) enacts, that if any person or persons “ wilfully and corruptly commit any manner of wilful perjury, by his or their deposition, in any of the king’s courts thereinbefore mentioned, viz. of Chancery, Whitehall, or elsewhere within any of the king’s dominions of England or Wales, or the marches of the same, where any person or persons shall have authority by virtue of the king’s commission patent, or writ to hold plea of land, or to examine, hear, or determine any title of lands, or any matter or witnesses concerning the title, right, or interest of any lands or tenements or hereditaments, or in any of the king’s courts of record, or in any leet, view of frank pledge or law-day, ancient demesne court, hundred court, court baron, or in any court or courts of the stannary in the counties of Devon or Cornwall, or being examined *ad perpetuam rei memoriam*; every such offender shall forfeit twenty pounds, half to the party grieved, and have imprisonment by the space of six months, without bail or mainprize; and the oath of such offender shall not from thenceforth be received in any court of record in England or Wales, until such judgment shall be reversed, &c. on which reversal the party grieved shall recover damages against the party who did procure the said judgment so reversed, to be first given.” In the construction of this statute, it has been laid down, that no one can be guilty of perjury, within its meaning, who might not be guilty of subornation of perjury under its provisions; because it punishes the latter offence with greater severity than the former, and therefore could not intend to enlarge the purview as to what it treats as the smaller offence, beyond its scope, with respect to the latter. And, therefore, as under this act, subornation can only be committed in “ matters depending in suit by writ, action, bill, plaint, or information, in anywise concerning lands, tenements, or hereditaments, or goods;

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chattels, debts, damages, &c. the commission of perjury itself comes under the same restriction, 5 Co. 99, a. And on this ground, 'it is easy to account for the decision in Price's case, Cro. Jac. 120, where it is said generally, that no indictment will lie against a witness for the crown, for any thing he may depose, because the king cannot prosecute his own witness; for that was the case of an information *on the statute*, for some thing sworn on an *indictment*; and the position in its broadest sense, can never for a moment be supported, Hawk. b. 1. c. 69. s. 19. And as the clause in the statute respecting perjury committed by persons in their examinations *ad perpetuam rei memoriam*, or in their depositions in some of the courts there mentioned, is taken to relate only to the oath of a witness; therefore no one can be indicted under this statute for perjury committed in an answer in Chancery, in exhibiting articles of peace, in a presentment made as a homager of a court baron, or in waging law, or making oath before commissioners appointed to investigate title, 3 Inst. 166. 2 Rol. Abr. 77. Hawk. b. 1. c. 96. s. 20. It seems also questionable, whether any affidavit in a court of justice, or deposition before the sheriff on a writ of inquiry, can be made the subject of prosecution under this statute, Hawk. b. 1. c. 69. s. 21. There is also this distinction between perjury at common law and upon this act, that the former may be brought though the perjury is at once detected, and does not succeed in injuring any individual, but no indictment can be sustained for the latter, unless some one was actually aggrieved by the offence, 3 Inst. 166, 7. It is, therefore, much easier and more certain to proceed at common law, and proceedings on this act have become very unusual.

OFFENCE OF
PERJURY UNDER
5 ELIZ. c. 9.

The *Indictment* on the statute 5 Eliz. c. 9. must exactly pursue the language of the act. And therefore, if it allege that the defendant swore to the matter in question falsely and deceitfully, or falsely and corruptly, or falsely and wilfully, without saying wilfully and corruptly, it will be invalid, though it conclude that "so the defendant did commit wilful and corrupt perjury, contrary to the form, &c." Cro. Eliz. 147. 1 Leach, 71. And it is necessary to state expressly, that he was sworn, and the averment that "*tacto per se sacro evangelio deposuit*," will not supply its place, Cro. Eliz. 105. But there is no occasion to show whether he took the false oath by his own act, or by the subornation of another, though the words

Indictment for
perjury, on
5 Eliz. c. 9.

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**INDICTMENT
FOR PERJURY ON
5 ELIZ. c. 9.**

of the statute are “*If persons, by subornation, &c. or by their own act,*” &c. shall commit perjury; for as there is no possible motive for the crime which does not range itself under one or the other of these provisions, they are merely superfluous, and have no influence on the technicality of the proceedings, 3 Bulst. 147. In indictments on this statute, the precedents show how the affidavit, &c. was used, 7 T. R. 319. Skin. 403. Holt, 534. Like other indictments upon statutes, the indictment should conclude *contra formam*, though if this be omitted, it will be good as at common law, and the defendant may be punished with the penalties which would be inflicted if the act had not been referred to, but cannot be sentenced to the additional punishment prescribed in the statute, 2 Hale, 191, 2. Cro. C. C. 8th ed. 40.

Evidence.

Evidence. In support of an indictment on the statute, the evidence should show that the affidavit, &c. was used conformably to the indictment, 7 T. R. 319. and see further, ante, 312.

The punishment.

The *Punishment* is prescribed in the statute as recited above. To this the 2 Geo. 2. c. 25, adds the option of transportation for a term not exceeding seven years, or imprisonment for not more than three at the discretion of the judges. And in the case of perjury at elections, the 18 Geo. 2. c. 18, unites both penalties on the statute of Elizabeth and 2 Geo. 2; so that in Price's case, 6 East, 327, the court vacated their former judgment, and sentenced the defendants to forfeit twenty pounds each, be imprisoned six months, their oath not to be received, and after the expiration of their confinement, to be transported for six years. *Costs.* The prosecutor, unless he is also a witness, and his name appears as such on the back of the bill, cannot claim costs as a party grieved, if the indictment is at common law, but only when it is framed on the statute, 1 Esp. Rep. 126.

III. PERJURIES MADE FELONY.

Offence, &c.

Offence, &c. It is enacted by 31 Geo. 2. c. 10. s. 24. That whosoever shall willingly and knowingly take a false oath, or procure any person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive the payment of any wages, pay, or other al-

allowances of money, or prize-money due, or that were supposed to be due, to any officer, seaman, or other person entitled or supposed to be entitled to wages, pay, or other allowances of money or prize-money, for service due on board of any ship or vessel of his majesty, &c. or the executor, administrator, wife, relation, or creditor of any such officer or seaman, or other person who has really served, or was supposed to have served on board of any ship or vessel of his majesty, &c. shall be deemed guilty of felony, without benefit of clergy. In the proof of an offence under this statute, it must be shown that the prisoner took the oath by positive evidence, and mere circumstantial testimony will not suffice, 1 Leach, 327.

IV. SUBORNATION OF PERJURY.

Subornation of Perjury, at common law, is the procuring The offence. another to commit legal perjury, who, in consequence of the persuasion, takes the oath, to which he has been incited, Hawk. b. 1. c. 69. s. 10. By 5 Eliz. c. 9, the operation of which as to perjury itself we have already considered, it is enacted, that whoever shall unlawfully and corruptly *procure* any witness or witnesses, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever, depending in suit and variance, by any writ, action, bill, complaint, or information, in any wise concerning any lands, tenements, or hereditaments, goods, chattels, debts, or damages in any of the king's courts, &c. (as enumerated, ante, 314,) or shall unlawfully and corruptly procure or suborn any witness or witnesses who shall be sworn to testify *in perpetuam rei memoriam*, shall forfeit £40, and if he has not that sum or property to its amount, he shall be imprisoned one year and stand in the pillory one hour in the town next adjoining the place where the perjury was committed. To render the offence of subornation of perjury complete, either at common law or on the statute, the false oath must be actually taken, and no abortive attempt to solicit will bring the offender within its penalties, 3 Mod. 122. 1 Leach, 455, in notes. But the criminal solicitation to commit perjury, though unsuccessful, is a misdemeanor at common law, punishable not only by fine and imprisonment, but by corporal and infamous punishment, 2 East Rep. 17. Hawk. b. 1. c. 69. s. 10. 6 East, 464.

Indictment.

Indictment. In the indictment for this offence, it does not seem to be necessary to set forth the means used by the defendant to effect his design, but it is sufficient to state that he "by sinister and unlawful labours and means" procured the commission of the perjury, 2 Ld. Raym. 886. 2 Leach, 796. And although it must appear on the face of the proceedings that the intention of the defendant was consummated, the word "procured" or "persuaded" will sufficiently convey this idea, 2 Ld. Raym. 889. Though the older precedents generally state a promise of money, the modern ones commonly state merely an endeavour to suborn, 2 Leach, 796.

The evidence.

The Evidence. In support of an indictment for subornation, the record of the witness's conviction for perjury is no evidence against the suborners, but the offence of the perjured witness must be again regularly proved, 1 Leach, 455. Russ. 1796.

Punishment.

Punishment. As prescribed in the statute. By the 2 Geo. 2. c. 25, transportation for seven years, or imprisonment for the same, or for any shorter term in either case, may be inflicted on a party convicted of this offence. And it has been said that subornation of perjury should be visited with a heavier punishment than perjury itself, for *plus peccat auctor quam actor*, 5 Co. Rep. 99. 3 Inst. 167.

INDICTMENTS FOR PERJURY IN CIVIL PROCEEDINGS BEFORE TRIAL.

For perjury in an affidavit to hold to bail in C. P. sworn before deputy filazer in London, in falsely negating tender in bank notes (a).

London. That S. B. late of the parish of Saint Mary le Bow, in the ward of Cheap, in London aforesaid, yeoman, wickedly and maliciously devising and intending unlawfully and unjustly to aggrieve and oppress one P. K. and also to subject him, without any just cause, to divers costs and charges, and also to cause and procure the sum of forty-one pounds six shillings and six pence, to be indorsed upon a process of the court of

(a) This was an indictment against Samuel Bradford, A. D. 1804, on which he was convicted, see notes as to the of-

fence, process, indictment, evidence, and punishment, ante, 302 to 314.

the court of our said lord the king of the bench at Westminster, by virtue whereof the said P. K. might be arrested to answer in the same court, at the suit of W. T., R. B., and M. T. with an intent that the said P. K. should be compelled to find bail for the said sum of — pounds; according to the form of the statute in such case made and provided (*a*), or in default thereof should suffer imprisonment, on, &c. at the parish aforesaid, in the ward aforesaid, in London aforesaid (*b*), came in his proper person before F. G. gentleman, then being deputy of T. H. gentleman, then filazer of the said court of our said lord the king of the bench of and for the county of Surrey, and then and there in due form of law was sworn and did take his corporal oath upon the Holy Gospel of God, before the said F. G. (he the said F. G. then and there having a competent authority to administer the said oath to the said S. B.) and that the said S. B. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit in writing, in substance and to the effect following (*c*), (that is to say) that the said P. K. at the time of making the said affidavit, was justly and truly indebted to the said W. T., R. B., and M. T. in the sum of — pounds, for goods sold and delivered by the said W. T. R. B. and M. T. to the said P. K. and at his request, and that no offer had been made to pay the said sum of — pounds, or any part thereof, in any note or notes of the governor and company of the Bank of England, expressed to be payable on demand; as by the said affidavit, affiled in the said court of our said lord the king of the bench at Westminster aforesaid, in the said county of Middlesex, (amongst other things,) more fully appears (*d*), whereas in truth and in fact, an offer had been made to the said S. B. as clerk to the said W. T., R. B., and M. T. and on their account, before the deposing and making of the

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(*a*) 12 Geo. 1. c. 29. s. 2.

(*b*) As to local description, 2 Leach, 800, and Holt, 534, ante, 307, 308. In most precedents the real parish is here stated, see precedents, post.

(*c*) This mode of introducing the matter sworn, or the

words "in manner following," is proper, see ante, 309: or it may be stated, that the defendant made affidavit in writing that, &c. as in 4 Wentw. 249, 231.

(*d*) This allegation is unnecessary, ante, 311.

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said affidavit of the said S. B. to wit, on the said, &c. aforesaid, to wit, at, &c. aforesaid, to pay a part of the said sum of — pounds, to wit, the sum of thirty-nine pounds, in notes of the governor and company of the Bank of England, expressed to be payable on demand, and whereas in truth and in fact an offer had been made to the said W. T., R. B. and M. T. before the deposing, swearing, and making the said affidavit of the said S. B. to wit, on the said, &c. at, &c. aforesaid, to pay a part of the said sum of — pounds, to wit, the sum of thirty-nine pounds, in notes of the governor and company of the Bank of England, expressed to be payable on demand, of which offer the said S. B. at the time of deposing, swearing, and making of his said affidavit well knew (*a*). And so the jurors aforesaid, upon their oath aforesaid, do say that the said S. B. on the said, &c. at, &c. aforesaid, before the said F. G. so as aforesaid, having a competent authority (*b*) to administer the said oath to the said S. B. falsely, maliciously, and wickedly (*c*), in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the great damage of the said P. K. and against the peace of our said lord the king, his crown and dignity.

For perjury in an affidavit to hold to bail, before deputy filazer for Middlesex, in false swearing to the debt (*d*).

Middlesex. That W. G. late of, &c. gentleman, wickedly and maliciously contriving and intending unjustly to aggrieve one G. F. and also the said G. F. to great expence of his monies wickedly to induce and bring, and also to cause the sum of ten pounds to be indorsed upon a process of the court of our said lord the king of the said C. B. at Westminster, made out by the filazer of and for the said county of Middlesex, by virtue of which the said G. F. might, by the name of G. F., be arrested to answer in the same court at the suit of T. H. with an intent that the said G. F. should be compelled to find bail

(*a*) See the same allegation, 4 Wentw. 231, where the defendant swears to believe, this allegation may be proper, but otherwise it is unnecessary: *quare*, should there not be a venue, as to the knowledge, see 4 Wentw. 231.

(*b*) Some of the precedents are, "having sufficient and

competent power and authority to administer," &c. see 4 Wentw. 272.

(*c*) Some forms run, "falsely and maliciously, wilfully and corruptly."

(*d*) See form, 4 Wentw. 272, and next precedent, and ante, 302 to 314. as to the law, &c.

for the aforesaid sum of ten pounds, according to the form of the statute in such case made and provided (*a*), on, &c. at the parish of Saint Andrew, Holborn, in the county of Middlesex aforesaid, came in his proper person before R. B. gentleman, then deputy of R. E. esquire, then one of the filazers of the said court of Common Pleas, to wit, of and for the said county of Middlesex (*b*), which said R. E. then and there was the person who, by virtue of the said office of filazer, and according to the custom of the said court, made out the process of the same court in that behalf, against the said G. F., and the said W. G. did then and there take his corporal oath upon the Holy Gospel of God, before the said R. B. (he the said R. B. then and there having sufficient power and authority to administer the said oath to the said W. G. in that behalf) and that the said W. G. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and little regarding the laws of this realm, or the pains and penalties in the same contained, but his aforesaid oath esteeming as nothing, then and there, on, &c. at, &c. aforesaid, before the said R. B. on his oath aforesaid, falsely, maliciously, wilfully, and corruptly did say, depose, swear, and make affidavit in writing, which said affidavit is entitled as followeth, to wit, "In the Common Pleas," and the said affidavit so made by the said W. G. was and is as follows, that is to say, W. G. of, &c. gentleman (meaning himself the said W. G.) maketh oath that G. F. (meaning the said G. F.) is indebted to the said T. H. (meaning the above-named T. H.) in the sum of ten pounds, on a judgment recovered by the said T. H. against the said G. F. (meaning the said G. F.) in his majesty's court of King's Bench at Westminster, whereas in truth and in fact the said G. F. at the time when he the said M. G. took his said oath and made his affidavit in form aforesaid, was not indebted to him the said T. H. in the sum of ten pounds upon a judgment recovered by the said T. H. against the said G. F. in his majesty's court of King's Bench at Westminster, and whereas in truth and in fact the said G. F. was not then indebted to the said T. H. in the

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(*a*) 12 Geo. 1. c. 29.

(*b*) It is suggested in 4 Wentw. 272, whether it should be here alleged, that the filazer made out the process for Middlesex, by the custom of the

court, and, therefore, of right made it against the defendant, but see precedent, ante, 318 and 307, and the next precedent.

said sum of ten pounds, on any account whatsoever(a). And so the jurors, &c. do say, &c. [*Conclude as ante*, 320.]

The like, being a more recent form (b).

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Middlesex. The jurors for our lord the king upon their oath present, that S. E. late of, &c. gentleman, wickedly and maliciously contriving and intending one G. W. unlawfully to aggrieve, and the said G. W. to great expence of his monies wickedly to put and bring, and also to cause the sum of £1880 to be indorsed upon a certain process of the court of our said lord the king of the bench at Westminster, commonly called a *capias ad respondendum*, by virtue of which the said G. W. might be arrested to answer in the same court at the suit of the said S. E. with intent that the said G. W. should be compelled to find bail for the aforesaid sum of £1880 of the monies of this realm, according to the form of the statute in such case made and provided, on, &c. at the parish of Saint Andrew, Holborn, in the county of Middlesex, came in his own proper person before one F. G. then being deputy filazer for the county of Middlesex, and then and there, to wit, on, &c. at the parish aforesaid, in the county aforesaid, in due form of law was sworn, and did take his corporal oath upon the Holy Gospel of God before the said F. G. (he the said F. G. then and there having sufficient and competent power and authority to administer an oath to the said S. E. in that behalf,) and that the said S. E. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, before the said F. G. upon his the said S. E.'s oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit in writing, amongst other things, in substance and to the effect following, that is to say, that G. W. (meaning the said G. W. before mentioned) was indebted to him the said S. E. in the sum of £1880 and upwards, for money had and received of him the said S. E. by the said G. W. and for money lent and advanced by him the said S. E. to and for the use of the said G. W. and for money paid by him the said S. E. to and for the said G. W. (as by the same affidavit affiled in the said court of our said lord the king of the bench at Westminster

(a) See another form, negating the debt in different ways, 4 Wentw. 231, 232, and precedents, post.

(b) This was the indictment, the 48 Geo. 3. against Emden, from the crown office.

aforesaid, in the county of Middlesex, amongst other things more fully appears) (*a*), whereas in truth and in fact the said G. W. in the affidavit aforesaid named, was not, at the time of making the said affidavit by the said S. E. as aforesaid, indebted to the said S. E. in the sum of £1880, for money had and received of the said S. E. by him the said G. W. and for money paid by the said S. E. to and for the said G. W. as in the said affidavit so made and sworn by the said S. E. is untruly set forth; and whereas in truth and in fact the said G. W. in the said affidavit named, was not, at the time of making the said affidavit by the said S. E. as aforesaid, indebted to the said S. E. in the said sum of £1880, upon any account whatever; and whereas in truth and in fact he the said G. W. in the said affidavit named was not, at the time of making the said affidavit by the said S. E. as aforesaid, indebted to the said S. E. in the sum of £1880, or in any other sum of money whatever, and whereas in truth and in fact he the said G. W. in the said affidavit named, did not, at the time of making the said affidavit as aforesaid, owe to, nor was he indebted to the said S. E. in the sum of £1880, on any account whatever; and the said S. E. then and there well knew the same, to wit, at, &c. and whereas in truth and in fact he the said G. W. did not at the time of making the said affidavit, by the said S. E. as aforesaid, owe to the said S. E. the said sum of £1880, and the said S. E. then and there well knew the same, to wit, at, &c. aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say that the said S. E. on, &c. at, &c. aforesaid, upon his oath aforesaid, before the said F. G. so then and there being such deputy filazer for the said county of M. as aforesaid, and then and there having sufficient and competent power and authority to administer the said oath to the said S. E. by his own act and consent, and of his own wicked and corrupt mind and disposition in manner and form aforesaid, did falsely, &c. [*as ante*, 320.]

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London. That T. D. late of, &c. wickedly, and maliciously contriving and intending one W. H. unlawfully to aggrieve, and the said W. H. to great expence of his monies wickedly to put and bring, and also to cause the sum of fifty-two pounds to be indorsed upon a process of the court of our said lord the king

For perjury in affidavit to hold to bail, sworn in London, before a judge of C. P. in falsely swearing to a debt (*b*).

(*a*) This allegation is unnecessary, *ante*, 311; nor is it necessary to state the jurat of

the affidavit, see 9 East, 445.

(*b*) See Cro. C. C. 8th edit. 339.

of the bench at Westminster, by virtue of which the said W. H. might be arrested, to answer in the same court at the suit of R. P. with intent that the said W. H. should be compelled to find bail for the aforesaid sum of fifty-two pounds, of the monies of this realm, according to the form of the statute in such case made and provided (*a*), on, &c. at L. to wit, in the parish of St. Dunstan in the West, in the ward of Farringdon Without, in London aforesaid, came in his proper person before H. G. esquire, then being one of the justices of our said lord the king of the Bench, and then and there, in due form of law, was sworn, and did take his corporal oath, upon the holy gospel of God, before the said H. G. (he the said H. G. then and there having sufficient and competent power and authority to administer an oath to the said T. D. in that behalf :) and that the said T. D. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there before the said H. G. upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit in writing (amongst other things) in substance, and to the effect following, that is to say, that W. H. (meaning the said W. H. above mentioned) of Banbury, in the county of Oxford, was then justly and truly indebted unto him the said T. D. in the sum of fifty-two pounds of lawful money, &c. by virtue of a promissory note drawn and made for the payment of the said sum of fifty-two pounds by the said W. H. to him the said T. D. and delivered to him the said T. D. by the said W. H. as by the same affidavit affiled in the said court of our said lord the king, of the bench at Westminster aforesaid, in the county of M. (amongst other things) more fully appears (*b*); whereas in truth and in fact, the said W. H. in the affidavit aforesaid named, was not, at the time of making the said affidavit by the said T. D. as aforesaid, indebted to the said T. D. in the said sum of fifty-two pounds in the said affidavit named, by virtue or on account of the said supposed promissory note in the said affidavit also mentioned; and whereas in truth and in fact, he the said W. H. in the said affidavit named, never did make, draw, or deliver any promissory note whatsoever, for the payment of money by him the

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(a) 12 Geo. 1. c. 29. s. 2.

(b) This allegation is unnecessary, ante, 311.

said W. H. to the said T. D. and whereas in truth and in fact, he the said W. H. in the said affidavit named was not, at the time of making the said affidavit as aforesaid, or at any other time, indebted to the said T. D. in the sum of fifty-two pounds, on any account whatsoever; and whereas in truth and in fact he the said W. H. in the said affidavit named, was not, at the time of making the said affidavit as aforesaid, or at any other time, indebted to the said T. D. in any sum of money whatsoever; and whereas in truth and in fact he the said W. H. did not, at the time of making the said affidavit as aforesaid, or at any other time, owe to the said T. D. the sum of fifty-two pounds, or any other sum of money, whatsoever. And so the jurors, &c. [*Conclude as ante*, 320.]

That S. C. late of, &c. gent. wickedly and maliciously contriving to injure one G. W. and to cause the sum of ten pounds to be indorsed upon a certain writ of our lord the now king, called an attachment of privilege, then about to be, and which was, issued out of the court of our said lord the now king of the Bench at Westminster, in the county of M. against the said G. W. at the suit of the said S. C. directed to the sheriff of —, for the purpose of arresting the said G. W. at the suit of the said S. C. in order that he might be compelled to find bail for the said sum of ten pounds, according to the form of the statute in such case made and provided, heretofore, to wit, on, &c. at the Prothonotaries' Office in Tanfield Court, Inner Temple, in the city of L. that is to say, at, &c. aforesaid, in his own proper person came before J. H. gent. then and there being deputy Prothonotary of the said court of our said lord the king of the Bench at W. aforesaid, and did then and there take his corporal oath upon the holy gospel of God, and was in due manner sworn before the said J. H. so being such officer as aforesaid, he the said J. H. then and there having sufficient power and authority to administer such oath to the said S. C. in that behalf, and the said S. C. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, did then and there, to wit, on, &c. aforesaid, at the Prothonotaries' Office, aforesaid, to wit, at, &c. afore-

For perjury in affidavit in trover, sworn before deputy prothonotary of C. P. in London (a).

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(a) See precedents and notes, the late rule, as to holding to ante, 318, &c. This was before bail in trover.

said, before the said J. H. upon his oath, aforesaid, falsely, wickedly, wilfully, maliciously, and corruptly, and with intent to compel the said G. W. to find bail as aforesaid, say, depose, swear, and make affidavit in writing, amongst other things, in substance and to the effect following, that is to say, that the said G. W. then did hold and unjustly detain from him the said S. C. certain goods and chattels of and belonging to him the said S. C., and that the said goods and chattels were of the value of ten pounds, as by the said affidavit filed in the said court of, &c. amongst other things more fully appears; whereas, in truth and in fact, at the said time when the said S. C. did so take his oath, and make his affidavit as aforesaid, the said G. H. did not hold and unjustly detain from the said S. C. any goods and chattels belonging to the said S. C. of the value of ten pounds. And whereas in truth and in fact, the said G. W. did not at any time, when the said S. C. so made his said affidavit as aforesaid, hold, and unjustly detain any goods and chattels of the said S. C. whatsoever, which he the said S. C. at the said time of making his said affidavit, well knew, to wit, at the Prothonotaries' office aforesaid, that is to say, at, &c. aforesaid. And so the jurors, &c. do say, that the said S. C. on, &c. aforesaid, at, &c. aforesaid, before the said J. H. so having sufficient, &c. as aforesaid, falsely, maliciously, wickedly, and corruptly, in manner and form aforesaid, did commit wilful, &c. [as ante, 320.]

For perjury in an affidavit of debt in K. B. sworn in London, before the signer or deputy signer of the bills of Middlesex (a).

London. That A. B. late of, &c. unlawfully, wickedly, and maliciously contriving and intending to aggrieve one C. D. and to put the said C. D. to great charges and expence of his monies, and also to cause the sum of fifty pounds and nine shillings, to be indorsed upon a certain precept, issuing out of the court of our said lord the king, before the king himself, called a bill of Middlesex, with intention to cause and procure the said C. D. to be arrested, to appear in the same court, at the suit of the said A. B. and also with an intent that the said C. D. should be compelled to find bail for the aforesaid sum of fifty pounds and nine shillings, according to the form of the statute in such case made and provided, he the said A. B. on, &c. at L. aforesaid, to wit, in the parish of St. D. in the West, in the

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(a) See form, Cro. C. A. 476, to 325, and the notes ante, and another form, 4 Wentw. 302 to 318. 249; and the forms ante, 318

ward of F. Without, in L. aforesaid, in his own proper person came before W. M. gentleman, then being signer of (a) all precepts, issuing out of the said court of our said lord the king, before the king himself, called Bills of Middlesex, and then and there, to wit, on, &c. aforesaid, at, &c. aforesaid (b), did take his corporal oath upon the holy gospel of God, before the said W. M. (he the said W. M. then and there having sufficient and competent power and authority to administer the said oath to the said A. B.) (c); and that the said A. B. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there before the said W. M. upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit in writing, *according to the tenor following* (d), to wit, "In the King's Bench, A. B. of H. street, in the county of M. esquire, (meaning the said A. B.) maketh oath, that C. D. is justly and truly indebted to this deponent (meaning himself the said A. B.) in the sum of fifty pounds and nine shillings, as drawer of an inland bill of exchange, which said bill was indorsed to this deponent (meaning himself the said A. B.) as by the said affidavit affiled in the said court of our said lord the king, before the king himself at W. in the county of M. more fully appears (e), whereas in truth and in fact, the said C. D. in the said affidavit mentioned, did not owe the said A. B. the sum of fifty pounds and nine shillings, as drawer of an inland bill of exchange, and whereas in truth and in fact, the said C. D. in the said affidavit named, did not, at the time when the said A. B. so made such affidavit as aforesaid, or at any other time whatsoever, owe to the said A. B. the sum of fifty pounds and nine shillings, as the drawer of an inland bill of exchange, and whereas in truth and in fact, the said C. D. did not, at the time of making such affidavit, or at any other time,

(a) Or, "Then being deputy to W. M. esq. then signer of all precepts, &c."

(b) In a precedent in 4 Wentw. 249, the issuing of the bill of Middlesex is stated, but this is unnecessary, see 7 T. R. 315.

(c) In a precedent in 4 Wentw. 249, the act of parliament giving the authority is

stated, but this is unnecessary, ante, 307.

(d) See this form, Cro. C. C. 477. This binds the party to an exact recital, and therefore is injudicious, see ante, 309, 10. The forms of introducing the matter sworn as ante, 322, are preferable.

(e) This allegation is unnecessary, ante, 311.

owe to the said A. B. any sum of money, on any account whatsoever. And so the jurors, &c. [*as ante*, 320.]

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For perjury in an affidavit of debt, sworn before a commissioner of K. B. (*a*).

Kent. That A. B. late of, &c. being an evil-disposed person, and wickedly contriving and intending to aggrieve, injure, and prejudice one C. D. and to cause the sum of twenty pounds to be indorsed upon a certain process, issuing out of the court of our said lord the king, before the king himself, called a latitat, with intention to cause and procure the said C. D. to be arrested, to appear in the same court, at the suit of the said A. B. and also with an intent that the said C. D. should be compelled to find bail for the said sum of twenty pounds, according to the form of the statute in such case made and provided, he the said A. B. on, &c. at, &c. aforesaid, came in his proper person before E. F. gentleman, (*b*) then and there being a commissioner duly authorized and empowered to take and receive affidavits in, touching and concerning matters and proceedings of or in the said court of our said lord the king, before the king himself (*c*), and that the said A. B. then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, was duly sworn, and did take his corporal oath upon the holy gospel of God, before the said E. F. (he, the said E. F. then and there having sufficient and competent power and authority to administer the said oath to the said A. B. in that behalf;) (*d*) and that the said A. B. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, before the said E. F. as such commissioner as aforesaid, upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did depose, swear, and make affidavit in writing (amongst other things), in substance and to

(*a*) See Cro. C. C. 8th ed. 356. See another form, 4 Wentw. 230. See description of commissioners in C. P. 4 Wentw. 246; et post, 336. The commissioner is appointed under 29 Car. 2. c. 5. See precedents ante, 318, and notes ante, 302 to 318.

(*b*) In 4 Wentw. 231. it is averred "he the said E. F. then and there being one of the commissioners of our *said lord the king* duly authorized, &c.;"

but he is a commissioner of the court, see 12 Geo. 1. c. 29. s. 2.

(*c*) In Cro. C. C. 8th edit. 356, it is alleged, that the court was then held at Westminster, &c. but this is unnecessary and improper, if the affidavit were sworn in vacation, 5 Burr. 2586. 3 T. R. 184. 1 Saund. 300, b. n. 7.

(*d*) In 4 Wentw. 231, the statute 12 Geo. 1. c. 29, is here referred to, but this is unnecessary, see ante, 307.

the effect following, that is to say, that C. D. (meaning the said C. D. before mentioned), of M. in the county of K. was justly and truly indebted unto him, the said A. B. in the sum of twenty pounds of lawful money, for money lent and advanced, as by the same affidavit, affiled in the said court of our said lord the king, before the king himself, at W. aforesaid, (amongst other things) more fully appears (*a*), whereas, in truth and in fact, he, the said C. D. in the said affidavit named, was not, at the time of making the said affidavit, or at any other time, indebted unto him, the said A. B. in the aforesaid sum of twenty pounds in the said affidavit mentioned, for money lent and advanced, or upon any account whatsoever; and whereas, in truth and in fact, the said C. D. was not, at the time of making the said affidavit, or at any other time, indebted unto him the said A. B. in any sum of money whatsoever. And so, &c. [*as ante*, 320.]

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Middlesex. That J. M. late of, &c. wickedly and maliciously contriving and intending to injure one W. S. D. then being in the custody of the marshal of the marshalsea of our said lord the king, before the king himself, at the suit of one G. H. and to cause the said W. S. D. to be kept and detained in custody of the said marshal, as a prisoner, by and at the suit of him the same J. M. for a large sum of money, to wit, the sum of £340, by filing a bill against him the said W. S. D. as a prisoner in such custody as aforesaid, according to the course and practice of the said court of our said lord the king, before the king himself, on, &c. at Westminster, in the county of Middlesex, did come in his the said J. M.'s own proper person, into the court of our said lord the king, before the king himself, the said court then and still being holden at Westminster, in the county of Middlesex aforesaid, and did then and there produce to the said court, a certain affidavit in writing of him the said J. M. to be exhibited to the said court for the purpose last aforesaid, and then and there, before the said court was duly sworn, and took his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit, (the same court then and there having a lawful and competent authority to administer the said oath to the said J. M. in that behalf, and to take and receive the said affidavit.) And

For perjury in an affidavit of debt sworn in open court in K. B. to detain a prisoner already in custody (*b*).

(*a*) Not necessary, *ante*, 311. (*b*) See notes, *ante*, 302 to 318.

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that the said J. M. being so sworn as aforesaid, but not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil; and having no regard to the laws of this realm, did then and there, to wit, on, &c. at, &c. aforesaid, in and by his affidavit aforesaid, upon his oath aforesaid, before the said court (the said court then and there having lawful and competent authority to administer the said oath to the said J. M., and to receive the said affidavit), falsely, wickedly, wilfully, maliciously, knowingly, and corruptly, and with intent to detain the said W. S. D. in the said custody of the said marshal as aforesaid, or to compel the said W. S. D. to find bail as aforesaid, say, depose, and swear, amongst other things, that A. D. (meaning the said W. S. D.) then was justly indebted to him the said J. M. in the sum of £340, and upwards, for the use and hire of certain apartments furnished, of him the said J. M., and also for money paid, laid out, and expended, and lent and advanced by him, the said J. M. to and for the use, and on the account of him, the said A. D. (again meaning the said W. S. D.) at his, (meaning the said W. S. D.'s) request, whereas, in truth and in fact, the said W. S. D. was not, at the time of making the said affidavit by the said J. M. as aforesaid, indebted to the said J. M. in the said sum of £340, and upwards, in the said affidavit mentioned for the use and hire of certain apartments furnished by the said J. M.; and also for money paid, laid out, and expended, and lent and advanced by the said J. M. to and for the use and on the account of the said W. S. D., and whereas, in truth and in fact, the said W. S. D. was not, at the time of making the affidavit as aforesaid, or at any other time, indebted to the said J. M. in the said sum of £340, on any account whatsoever; and whereas, in truth and in fact, he, the said W. S. D. did not, at the time of making the affidavit as aforesaid, owe to the said J. M. the said sum of £340, or any part thereof, or any other sum of money whatsoever, which he, the said J. M. at the time of making his said affidavit, well knew, to wit, at, &c. aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say that the said J. M. on the said, &c. aforesaid, at, &c. aforesaid, upon his oath aforesaid, taken in the open court of our said lord the king, before the king himself (the same court then and there having lawful and competent authority to administer such oath to the said J. M. in that behalf,) falsely, maliciously, wilfully, and corruptly, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God; to

the great damage of the said W. S. D.; to the evil and pernicious example of all others, and against the peace of our said lord the king, &c. [*Second count similar to the first, only stating the party aggrieved to be A. D. as called in the affidavit, instead of W. S. D.*]

Surrey. That A. C. late of, &c. wickedly and maliciously contriving and intending one B. W. to aggrieve, and the said B. W. to great expence of his monies, wickedly to put and bring, and to cause the sum of ten pounds to be indorsed upon a process to be issued out of the Palace Court of Westminster, of our said lord the king, holden at S. aforesaid, in order to cause and procure the said B. W. to be arrested thereon, to appear in the same Palace Court at the suit of the said A. C. and also with intent that the said B. W. should be compelled to find bail for the aforesaid sum of ten pounds, according to the form of the statute in such case made and provided, on, &c. at the said Palace Court of Westminster, of our said lord the king, holden at Southwark, in the parish and county aforesaid, and within the jurisdiction of that court, came in his proper person before J. P. gentleman, and then and there did produce and exhibit a certain affidavit, in writing, of him the said A. C. and then and there the said A. C. in due form of law was sworn, and did take his corporal oath, upon the holy gospel of God, touching the matters in that affidavit contained, before the said J. P. (he the said J. P. then and there having sufficient and competent power and authority to administer an oath to the said A. C. in that behalf;) and that the said A. C. then and there, upon his said oath taken before the said J. P. as aforesaid, did swear that the contents of the said affidavit were true; and that the said A. C. so being sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and little regarding the laws of this realm, or the pains and penalties therein contained, then and there, upon his oath aforesaid, in his affidavit aforesaid, before the said J. P. (he the said J. P. then and there having a competent authority to administer the said oath to the said A. C. in that behalf,) falsely, wilfully, wickedly, and corruptly did say, depose, and swear, (amongst other things) in substance, and to the effect following, that is to say, that

For perjury in an affidavit to hold to bail in Marshalsea Court (a).

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(a) See Cro. C. C. 8th edit. 340. Ante, 318 to 328.

B. W. (meaning the said B. W. before mentioned) was indebted to him the said A. C. in the sum of ten pounds, of lawful money of Great Britain, for rent ; as by the said affidavit affiled in the said Palace Court of Southwark aforesaid, (amongst other things) more fully appears (a), whereas in truth and in fact, the said B. W. was not, at the time of making the said affidavit, or at any other time, indebted to him the said A. C. in the aforesaid sum of ten pounds, or in any other sum of money whatsoever. And so, &c. [*as ante*, 320.]

For perjury in
justifying bail in
court of K. B. (a)

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Middlesex. That in the term of Easter, in the fifteenth year of the reign, &c. a certain plea of trespass on the case was depending in the court of our said lord the king, before the king himself, the said court then and still being at Westminster, in the said county of Middlesex, between J. H. and E. T. late of B. in the county of B. shopkeeper, wherein the said J. H. was plaintiff, and E. T. was defendant, for the non-performance of certain promises and undertakings, made by the said E. T. to the said J. H. to the great damage of the said J. H. of five hundred and sixty-six pounds, as the said, &c. in which said plea the said E. T. had before that time been arrested and held to bail for the sum of five hundred pounds. And the jurors, &c. further say, that whilst the said plea was depending in the court of our said lord the king, before the king himself at W. aforesaid, and in the said term of Easter, in the fifteenth year aforesaid, that is to say, on, &c. M. T. late of, &c. came into the said court of our said lord the king, before the king himself, the said court then and still being at W. aforesaid, in the said county of M. and then and there offered himself to be, and became one of the bail of the said E. T. in the plea aforesaid, and thereupon the said M. T. was then and there in due manner sworn in and by the said court to make true answer to all such questions as should be demanded of him the said M. T. the said court then and there having sufficient and competent authority to administer such oath to the said M. T. And the jurors, &c. do further say, that the said M. T. so being sworn as aforesaid, then and there, to wit, on the said, &c. at W. aforesaid, in the said county of M. in the said court of our said lord the king, before the king himself, the said court then and

(a) Not necessary, *ante*, 311. and next precedent, and note,
(b) See form, 6 Wentw. 423, *ante*, 302 to 318.

still being at W. aforesaid, in the said county of M. was interrogated concerning the circumstances and property of him the said M. T. and thereupon he the said M. T. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, in order to impose upon the said court, and to prevent the said court from knowing the true circumstances and property of him the said M. T. and his then and former situation in life (a), on the said, &c. aforesaid, at W. in the said county of M. and before the said court of our said lord the king, before the king himself at W. aforesaid, upon his corporal oath aforesaid, did say and depose, that he the said M. T. had an estate in the parish of W. in the county of B. which said estate was then in the possession of J. T. the father of him the said M. T. and that the said J. T. rented the said estate of him the said M. T. and that he the said M. T. never lived as servant with Mr. E. (meaning one E. of —) (b), whereas in truth and in fact, at the time of taking of the said oath the said J. T. did not rent any estate in the parish of W. aforesaid, of the said M. T. and whereas in truth and in fact, the said M. T. at the time of taking of the said oath as aforesaid, did live as a servant with the said Mr. E. And so the jurors, &c. aforesaid, do say, that the said M. T. on the said, &c. at, &c. aforesaid, in, and before the said court of our lord the king, before the king himself, the said court then and still being holden at W. aforesaid, in the said county of M. upon his oath aforesaid, falsely, wickedly, voluntarily, and by his own act and consent did commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

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Middlesex. That on, &c. a certain action was depending in the court of our said lord the king, before the king himself at W. in the said county of M. between W. P. plaintiff, and W. S. defendant, and that afterwards, to wit, on, &c. in the parish of St. D. in the West, in the Ward of F. without, in

For perjury in justifying bail in court of K. B. in swearing that the deponent had not been bail for another person (c).

(a) In the precedent in 6 Wentw. 424, there is a mistake in this part of the indictment.

(b) *Quære*, as to this innuendo, ante, 310, 11.

(c) See form, 6 Wentw. 424,

and the last precedent, and ante, 302 to 312, as to the law and form of indictment, &c. *Quære*, if it should not be averred that the questions were material, ante, 307.

the city of L. P. F. and J. B. came before Sir M. F. knight, then and yet being one of the justices of our said lord the king, assigned to hold pleas before the king himself, and they the said P. F. and J. B. by the names and additions of P. F. of St. M. Lane, in the parish of St. Martin in the Fields, dealer and chapman, and J. B. of K. H. Court, D. Lane, cutler, did, before the said Sir M. F. enter into a recognizance of bail for the said W. S. the defendant aforesaid, in the action above mentioned, at the suit of the said W. P. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on, &c. the said P. F. late of, &c. labourer, did appear in his own proper person, in the court of our said lord the king, before the king himself at W. aforesaid, in the county of M. as one of the bail for the said W. S. in the said action, in order to justify himself as such bail, and to be allowed and approved of by the said court, as one of the bail for the said W. S. in the said action, and he the said P. F. was then and there on that occasion, in the court aforesaid, duly sworn, and took his corporal oath upon the holy gospel of God, that he the said P. F. should true answer make to all such questions as should be demanded of him by the said court, the said court then and there having sufficient power and authority to administer the said oath to the said P. F. in that behalf, and that the said P. F. being so sworn as aforesaid, was then and there in the court aforesaid, upon the occasion aforesaid, asked if he (meaning the said P. F.) was not bail for one T. M. at the suit of T. B. to which the said P. F. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, did then and there in the court aforesaid, upon his oath aforesaid, falsely, wickedly, wilfully, and corruptly answer, say, depose, and swear, that he was not, and that the said P. F. being then and there, upon the occasion aforesaid, in the court aforesaid, upon his oath aforesaid, asked this question, Was not you, (meaning the said P. F.) bail for T. M. at the suit of T. B. ? he the said P. F. in the court aforesaid, upon his oath aforesaid, to the said last-mentioned question, did falsely, wickedly, wilfully, and corruptly make this answer, No, I (meaning himself the said P. F.) never was ; and that the said P. F. being then and there in the court aforesaid, upon the occasion aforesaid, asked if he was not that bail with J. B. (meaning the said J. B.) for T. M. at the suit of T. B. he the said P. F. did then and there in the court aforesaid, upon his oath aforesaid, to the said last-men-

tioned question, falsely, wickedly, wilfully, and corruptly answer, say, depose, and swear, that he, (meaning himself the said P. F.) never was bail with J. B. (meaning the said J. B.) in other action than this, (meaning the said action then depending between the said W. P. and W. S.) and that the said P. F. was then and there, upon the action aforesaid, in the court aforesaid, asked this further question, Was not you (meaning the said P. F.) bail with B. (meaning the said J. B.) for T. M. at the suit of T. B. ? to which said last-mentioned question, he the said P. F. did then and there in the court aforesaid, on his oath aforesaid, falsely, &c. answer, say, depose, and swear thus, I (meaning himself the said P. F.) never was bail with B. (meaning the said J. B.) in any other action than this (meaning thereby, that the said P. F. never was bail with the said J. B. in any other action than the said action, then depending in the said court, between the said W. P. and the said W. S.) and the said P. F. being then and upon the action aforesaid, in the court aforesaid, asked this further question, Was not you (meaning the said P. F.) bail for T. M. at the suit of T. B. before any of the judges of this court (meaning any of the justices of our said lord the king, assigned to hold pleas before the king himself,) he the said P. F. did there in the court aforesaid, upon his oath aforesaid, to the said last-mentioned question, falsely, &c. answer, say, depose, and swear thus, No, I (meaning himself the said P. F.) never was; and the said P. F. being then and there, in the court aforesaid, upon the occasion aforesaid, asked this further question, Was not you, (meaning the said P. F.) bail for T. M. at the suit of T. B. before Sir M. F. ? (meaning the said Sir M. F.) then and yet one of the justices of our said lord the king, assigned to hold pleas before the king himself,) he the said P. F. did then and there in the court aforesaid, upon his oath aforesaid, to the said last-mentioned question, falsely, &c. answer, say, depose, and swear thus, No, I (meaning himself the said P. F.) never was; whereas, in truth and in fact, at the time when he the said P. F. did so take his said oath, and answer, say, depose, and swear, in form aforesaid, he the said P. F. had been bail for the said T. M. at the suit of the said T. B. and whereas in truth and in fact, at the time when he the said P. F. did so take the said oath, and answer, say, depose, and swear, in form aforesaid, he the said P. F. was bail for the said T. M. at the suit of the said T. B. and whereas, in truth and in fact, at the

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time when he the said P. F. did so take the said oath, and answer, say, depose, and swear, in form aforesaid, he the said P. F. was bail for the said T. M. at the suit of the said J. B. * and whereas in truth and in fact, at the time when the said P. F. so took his said oath, and did answer, say, depose, and swear, in form aforesaid, he the said P. F. had been bail with the said B. for T. M. at the suit of T. B. and whereas in truth and in fact before the said time when the said P. F. so took his said oath, and did answer, say, depose, and swear in form aforesaid, he the said P. F. had been bail for T. M. at the suit of T. B. before the said Sir M. F. one of the justices of our said lord the king, assigned to hold pleas before the king himself; and whereas in truth and in fact, before the said time when the said P. F. did so take his said oath, and answer, say, depose, and swear in form aforesaid, that is to say, on, &c. he the said P. F. did, together with the said J. B. at the parish of St. D. in the West, in the said ward of F. Without, in the said city of L. enter into a certain recognizance of bail before the said Sir M. F. knight, then and yet one of the justices of our said lord the king, assigned to hold pleas before the king himself, for T. M. the defendant, in a certain suit, depending in the said court of our said lord the king, before the king himself, between T. B. plaintiff, and the said T. M. the defendant: And so, &c. [*Conclude as in precedent, ante, 320.*]

For perjury in an affidavit in an inferior court, that the defendant had been attending on a subpoena when he was arrested in order to obtain his discharge (a).

Surrey. That the liberty of the mayor, commonalty, and citizens of L. of their town and borough of S. in the county of S. is an ancient liberty; and that within the said liberty there now is, and from time whereof, &c. there hath been a certain ancient court of record of our said lord the king, and his predecessors, kings and queens of England, holden at the court-house for the time being, within the town and borough aforesaid, and within the jurisdiction of the said court, before the steward of the said court for the time being, on Monday in every week, for the trial of personal actions, from time to time arising within the said borough, and within the jurisdiction of the said court: And the jurors, &c. do further present, that heretofore, to wit, on, &c. in, &c. J. H. late of the parish of, &c. in, &c. salesman, was duly and legally arrested within

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(a) See form, 4 Wentw. 264. See also 1 T. R. 63. Ante, 329. This precedent contains

no averment of the materiality, as in 1 T. R. 64, it ought so to do.

the town and borough of S. in the said county of S. and within the jurisdiction of the said court, by one S. S. then and still being an officer and minister of the court aforesaid, under and by virtue of a certain writ of our said lord the king, commonly called a *capias ad respondendum*, before then issued out of the said court, according to the custom of the said court, at the suit of one J. S. in a certain personal action before then commenced by the said J. S. against the said J. H. in the said court, according to the custom of the said court, and by the said J. S. alleged to arise within the jurisdiction of the said court. And the jurors, &c. do further present, that after the said arrest and whilst the said J. H. remained in the custody of the said S. S. under and by virtue of the said arrest as aforesaid, that is to say, on, &c. in, &c. he the said J. H. came personally into the said court of our said lord the king of the liberty of the mayor, commonalty, and citizens of the city of L. of their said town and borough of S. in the county of S. aforesaid, then holden at the court-house within the said town and borough, and within the jurisdiction of the said court, that is to say, in the parish of, &c. in, &c. before B. G. esquire, then steward of the said court, and did then and there, that is to say, in the said court so holden as aforesaid, and within the jurisdiction aforesaid, to wit, at, &c. in, &c. in order to be discharged from the said arrest, and from the custody of the said S. S. produce and exhibit to J. T. then and still being prothonotary of the said court, and an officer and minister of the court aforesaid, a certain writing, for the purpose of making the same an affidavit of him the said J. H.; and the said J. H. was then and there in due form of law, and in due course of justice sworn, and did then and there, for the purpose of being discharged as aforesaid, take his corporal oath upon the holy gospel of God, by and before the said J. T. (he the said J. T. having sufficient power and authority to administer an oath to the said J. H. in that behalf) of the truths of the matter contained in the same writing, and the said J. H. did then and there swear upon his oath so taken by and before the said J. T. as aforesaid, that the matters contained in the same writing were true, and did thereby make the same writing an affidavit of him the said J. H. And the jurors, &c. do further present, that the said J. H. so being sworn, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, did falsely, wickedly, and corruptly in his affidavit aforesaid, say

and swear in these words following (a), that is to say, [*here set forth the affidavit*] as by the said affidavit duly filed in the said court of our said lord the king will fully appear (b); whereas in truth and in fact, the said J. H. at the time he was so arrested, did not inform the said S. S. the said officer, that he the said J. H. had been attending in obedience to the said subpoena in the said affidavit mentioned, &c. [*negative the statements in the affidavit.*] And so, &c. [*as ante*, 320.]

For perjury in an affidavit before a commissioner authorized to take affidavits, made in order to discharge a rule to show cause why an information in nature of a quo warranto should not issue (c).

Derbyshire. That in the term of Easter, in the fifteenth year of the reign, &c. to wit, on Saturday next after the morrow of the Ascension of our Lord, a rule was made in and by the court of our said lord the king, before the king himself, the said court then being held at Westminster, in the county of Middlesex, for one R. T. to show cause why an information in the nature of a quo warranto should not be exhibited against him, to show by what authority he claimed to be a burgess or freeman of the town and borough of Derby. And the jurors, &c. further present, that S. C. late of the town and borough of Derby, in the county of Derby, esquire, wilfully devising, contriving, and intending to pervert the due course of law and justice, and to cause and procure the said rule, so made by the said court to be discharged against all truth and justice, afterwards, to wit, on, &c. at, &c. in his proper person came before J. J. gentleman, then being one of the commissioners of our said lord the king, duly authorized and empowered to take affidavits in the said court of our lord the king, before the king himself; and the said S. C. did then and there take his corporal oath, and was in due manner sworn upon the holy gospel of God, before the said J. J., he the said J. J. then and there having a lawful and competent authority to administer an oath to the said S. C. in that behalf. And the jurors, &c. do further present, that the said S. C. being so sworn as aforesaid, and not having, &c. but being, &c. and entirely disregarding the laws and statutes of this realm, and the pains and penalties thereby provided against wilful and corrupt per-

(a) It is better to say in substance as follows, &c. ante, 309, 10.

(b) This averment is unnecessary, ante, 311.

(c) See form, 4 Wentw. 253,

and ante, 302 to 318. The defendant was acquitted, and in a subsequent action for malicious prosecution recovered £500 damages, 4 Wentw. 256, notes.

jury, then and there, to wit, on the said, &c. at, &c. aforesaid, before the said J. J. falsely and maliciously, wickedly, wilfully, and corruptly, did say, depose and swear, and make affidavit in writing, amongst other things, to the effect and substance as followeth, that is to say, that he, &c. [*here set forth the affidavit as in 4 Wentw. 253, in which defendant swore as to belief to some facts.*] As the said S. C. had heard and did believe, as by the said S. C.'s affidavit in writing, and remaining filed in the said court of our said lord the king, before the king himself at Westminster aforesaid, more fully appears; whereas, in truth and in fact, the said S. C. at the time of making the said affidavit, well knew that, &c. [*negative the truth of the oath and conclude.*] And that the said S. C., at the time of making his said affidavit, well knew the same. And so, &c. [*as ante, 320.*]

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Kent. That R. W. late, &c. being a person of a wicked mind, and turbulent disposition, &c. at, &c. in his own proper person, together with one A. L., came before W. T. gentleman, then being one of the commissioners of our said lord the king (b), lawfully authorized and empowered to take and receive all and every such affidavit and affidavits, in the said county of Kent, as any person or persons should be willing and desirous to make before him, concerning any cause, matter, and thing depending, or in anywise concerning any of the proceedings in the court of King's Bench, according to the form of the statute in that case made and provided, and the said R. W. and A. L., on, &c. at, &c. took their corporal oaths, and each of them the said R. W. and A. L., took his corporal oath upon the holy gospel of God, before the said W. T., (he the said W. T. then and there having sufficient power and competent authority to administer an oath to the said R. W. and A. L., severally in that behalf, by virtue of the said statute, in, &c. and of a certain commission under the seal of the said court, duly issued out of the said court, pursuant to the said statute), (c) and that the said R. W. being so sworn, not having, &c. but being moved and seduced, &c. and unlawfully, wickedly, maliciously, and unjustly designing, contriving, and intending greatly to oppress, vex, and

For perjury in an affidavit, sworn before a commissioner, to procure a rule to compel two attornies to answer matters in affidavit (a).

(a) See form, 4 Wentw. 263. Ante, 327, and ante, 302 to 318.

(b) As to this allegation,

see ante, 327, note (b).

(c) This is unnecessary, see ante, 327.

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aggrieve, G. T., &c. then being severally attorneys of the said court of King's Bench, and to cause and procure a rule of the same court to be wrongfully, and without any just cause, issued against the said G. T., &c. to compel and oblige them severally to answer the several matters contained in the affidavit of the said R. W. and A. L., and thereby to induce and bring them into great expence of their monies, on, &c. aforesaid, at, &c. aforesaid, before the said W. T., upon his oath, did falsely, and maliciously, wilfully, wickedly, and corruptly, say, depose, swear, and make affidavit in writing; which said affidavit, so made by the said R. W., and also by the said A. L. is intituled, "In the King's Bench," Between R. W., and F. his wife, plaintiffs, and A. L., and M. his wife, defendants; in and by which said affidavit the said R. W. did say, depose, and swear as followeth, that is to say, [*here set out the affidavit, and then assign the perjury, and conclude as ante*, 320.]

For perjury in an affidavit of service of declaration in ejectment, sworn before a commissioner in the country (a).

That on, &c. and continually from thenceforth until and at the times hereinafter mentioned, one J. P. was tenant in possession of and in divers, to wit, two messuages, two barns, ten acres of land, ten acres of meadow, and ten acres of pasture, with the appurtenances, situate, lying, and being in, &c. to wit, at, &c. And the jurors, &c. further present that E. J. late of, &c. wickedly contriving, devising, and intending to pervert the due course of law, and to cause the said J. P. to be turned out of possession of the aforesaid premises, with the appurtenances, whereof he was such tenant in possession as aforesaid, upon a judgment in an action of trespass and ejectment against the casual ejector, without the said J. P. being served with a copy of a declaration in ejectment, and notice thereunder written to appear and defend that trespass and ejectment, and without his having an opportunity of defending the same, and to put him the said J. P., to great trouble, expence, and detriment, and afterwards, and whilst the said J. P. remained and continued tenant in possession of the aforesaid premises with the appurtenances, to wit, on, &c. at, &c. aforesaid, in a certain action of trespass and ejectment of farm, wherein E. J. on the demise of J. S. and E. his wife was the plaintiff, and one John Doe was the defendant, before then commenced and then depending in the court of great session for the county of R.

for the recovery of the possession of the aforesaid premises then in the possession of the aforesaid J. P. and whereof he was tenant in possession as aforesaid, and in which said action or suit of trespass and ejectment, a certain declaration in trespass and ejectment had been prepared, with a notice thereunder written, signed in the name of John Doe as the casual ejector, and directed to the said J. P. as tenant in possession, and annexed to a certain affidavit hereinafter mentioned, he the said E. J. the defendant, in his own proper person came before W. J. gentleman, then being one of the commissioners duly authorized and empowered to take affidavits in the said court of Great Sessions for the said county of R. according to the form of the statute in such case made and provided, and the said E. J. the defendant, did then and there take his corporal oath, and was in due manner sworn upon the Holy Gospel of God, before the said W. J. (he the said W. J. then and there having a lawful and competent authority to administer an oath to the said E. J. the defendant in that behalf.) And the jurors, &c. further present that the said E. J. the defendant, being sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and entirely disregarding the laws and statutes of this realm, and the pains and penalties thereby provided against wilful and corrupt perjury, then and there, to wit, on the said, &c. at, &c. aforesaid, falsely, wickedly, wilfully, voluntarily, maliciously, and corruptly did say, depose, swear, and make affidavit in writing, amongst other things, to the effect and in substance as followeth, that is to say, that he this deponent, (meaning the said E. J. the defendant) did, on the 16th day of March instant, (meaning the 16th day of March, in the 27th year, &c.) personally serve S. the wife of the said J. P. (meaning the said J. P.) tenant in possession of the premises in question, (meaning the said premises of which the said J. P. was tenant in possession as aforesaid, and for which the said action of trespass and ejectment had been so brought as aforesaid), and in the annexed declaration in ejectment (meaning the said declaration of ejectment in the aforesaid action or suit, and annexed to the aforesaid affidavit,) mentioned, with a true copy of the declaration, (meaning the said declaration in ejectment) annexed (meaning annexed to the aforesaid affidavit,) underneath which said copy (meaning the said copy of the said declaration in ejectment so pretended to have been served on the said wife of the said J. P.) was the like notice written, as is under the declaration (meaning the said declaration in ejectment,) annexed

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(meaning annexed to the aforesaid declaration,) and directed to the said J. P. (meaning the said J. P. and meaning the aforesaid notice so underwritten as aforesaid,) and this deponent (meaning the said E. J. the said defendant,) at the time of such service (meaning the time when he the said E. J. the defendant, pretended to have served the said copy of the said declaration in ejectment, and the notice to the same underwritten, on the said S. the wife of the said J. P. as aforesaid,) read the said notice (meaning the said notice to the said declaration in ejectment subscribed and underwritten,) and explained the purport and meaning thereof (meaning the said notice,) unto the said J. P.'s wife (meaning the said S. the wife of the said J. P.) on the premises (meaning the said premises in the said declaration in ejectment mentioned, and whereof the said J. P. was such tenant in possession as aforesaid,) as by the affidavit of the said E. J. the defendant, in writing, and remaining affiled in the said court of great sessions for the said county of R. more fully and at large appears, whereas in truth and in fact, he the said E. J. the defendant, did not, on the said, &c. or on any other day, or at any other time personally, or in any other manner, serve the said S. the wife of the said J. P. with a true copy of the said declaration in ejectment, and the said notice thereunto subscribed or annexed, or any other declaration in ejectment, with or without a notice thereunto subscribed, and whereas in truth and in fact, he the said E. J. the defendant, did not, at the time of such pretended service, or at any other time, read the said notice, or explain the purport or meaning thereof, unto the said S. the wife of the said J. P. on the said premises in the said declaration in ejectment mentioned, or at any other place, or in any other manner; and so, &c. [*as ante*, 320.]

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Indictment
against an attorney
for perjury
in an affidavit in
answer to a summary
application
against him (a).

Middlesex. That heretofore, that is to say, in Easter term, in the thirty-sixth year of the reign of, &c. T. S. of, &c. made a certain application to the court of our lord the now king, before the king himself, against W. C. late of, &c. gentleman, one G. C. and one T. B. he the said W. C. before and at the time of making the said application, being one of the attornies of the said court of our lord the now king, before the king

(a) See form, 4 Wentw. 287. but they were all over-ruled,
Several objections were taken 7 T. R. 315.
to this indictment after verdict,

himself at Westminster, in the county of Middlesex. And the jurors, &c. do further present, that afterwards, to wit, on Friday next, after one month from Easter day, in the thirty-sixth year of king George the Third, the said T. S. upon the affidavit of himself, and the affidavit of W. A. and J. S. and a certain paper-writing thereto annexed, being read by the said court of our said lord the now king, before the king himself, obtained a rule of the said court of our said lord the king, before the king himself, against the said W. C., G. S., and T. B. whereby it was ordered, that the said W. C., G. C., and T. B. upon notice of that rule to be severally given to them, should, upon Friday on the morrow of the Ascension of our Lord, answer the matters contained in the said affidavits, and attend the said court in person, at the time of answering as aforesaid, to wit, at, &c. And the jurors, &c. do further present, that afterwards, to wit, on Saturday next after the morrow of the Ascension of our Lord, in the thirty-sixth year aforesaid, a certain other rule was made by the said court of our said lord the now king, before the king himself, whereby it was, amongst other things, ordered, that the third day of the then next term, should be further peremptorily given to the said W. C., G. C. and T. B. to answer the matters contained in the affidavit in the said rule made on Friday next, after one month from Easter day, in the thirty-sixth year aforesaid mentioned, and attend the said court in person, to wit, at, &c. And the jurors, &c. do further present, that the said affidavit of the said T. S. contained, amongst other things, the matters following, that is to say, T. S. of Monmouth, gentleman, maketh oath, that, &c. [*here state the material part of the affidavit of T. S. with innuendoes, see 4 Wentw. 288, 289, and then proceed as follows.*] And the jurors, &c. further say, that the said paper-writing in the said rule made on Friday next after one month from Easter day, in the 36th year aforesaid mentioned, is the said sheet of paper, having a treble sixpenny stamp thereon fixed on the left side, and at the top thereof, and the name W. C. thereon wrote at the left side of the said paper, and the name and words "T. B. a master extraordinary in chancery," therein also wrote at the right side of the said paper, in the said affidavit of the said T. S. mentioned, to wit, at, &c. and that afterwards, to wit, on, &c. in the said court of our said lord the now king, before the king himself at Westminster, in the county of Middlesex, the same was produced and shewn to the said W. C. And the jurors, &c. do

further present, that the said W. C. contriving and intending to stop the course of public justice, on, &c. did come in his own proper person into the court of our said lord the king, before the king himself, the said court then being at Westminster, in the county of Middlesex, and did then and there produce to the said court, a certain affidavit in writing, of him the said W. C. to be exhibited to the said court for the purpose of discharging the said rules, and then and there before the said court was duly sworn, and took his corporal oath upon the Holy Gospel of God, that the contents of the said affidavit of him the said W. C. were true (the said court then and there having a lawful and competent authority to administer the said oath to the said W. C.) and to take and receive the said affidavit of the said W. C. and that the said W. C. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the pains and penalties therein contained, did then and there, to wit, on the said 31st day of May, in the 36th year aforesaid, at, &c. aforesaid, in and by his affidavit aforesaid, upon his oath aforesaid, before the said court (the said court then and there having a lawful authority to administer the said oath to the said W. C. and to receive his said affidavit), falsely, corruptly, knowingly, wilfully, and wickedly depose and swear, amongst other things, as follows, that is to say, that upon the attendance of this deponent (meaning himself the said W. C.) in this honorable court (meaning the said court of our said lord the king, before the king himself) on the 30th day of May instant (meaning the 30th day of May, in the 36th year aforesaid), in obedience to the rule in this matter (meaning the said rule made on Saturday next after the Morrow of the Ascension of our Lord, in the 36th year aforesaid), a sheet of stamped paper, as set forth in the affidavit of Mr. T. S. mentioned in the said rule (meaning the said affidavit of the said T. S. above mentioned), was produced and shewn to this deponent (meaning himself the said W. C.) having the name and words "T. B. a master extraordinary in chancery," and also the name or letters "W. C." set and subscribed thereon (meaning on the said paper); and positively saith, that W. C. set and subscribed upon the said sheet of stamped paper, and so produced and shown to this deponent (meaning himself the said W. C.) as aforesaid; is not the hand-writing of this deponent (meaning of himself the said W. C.) whereas in truth and in fact, the name and letters "W. C." set and subscribed upon the said sheet of

stamped paper, are the hand-writing of the said W. C. to wit, at, &c. And the jurors, &c. do further present, that the said W. C. upon his oath aforesaid, in and by his affidavit aforesaid, did falsely, corruptly, knowingly, wilfully, and wickedly further depose and swear as follows, that is to say, and this deponent (again meaning himself the said W. C.) further saith, that, &c. [*here state other matter, with innuendoes.*] Whereas in truth and in fact, the said W. C. at the time of making his affidavit aforesaid, well knew that the said paper in his said affidavit mentioned, to have been produced by the said G. C. at the time and on the occasion in the said affidavit of him the said W. C. in that behalf mentioned, was not the identical paper mentioned by the said T. S. in his affidavit above-mentioned, and which was so as aforesaid produced to the said W. C. in the said court of our said lord the king, before the king himself, to wit, at, &c. And the jurors, &c. do further say, that one of the said letters (copies whereof followed in the said affidavit of the said T. S.) purports to be a letter from the said W. C. to the said G. C. dated "W. 6th March, 95;" and which contains, amongst other things, the following, that is to say, I (meaning himself the said W. C.) &c. [*here the contents of the letter were stated.*] And the jurors, &c. further say, that the said W. C. of, &c. upon his oath aforesaid, in and by his affidavit aforesaid, did falsely, corruptly, knowingly, wilfully, and wickedly further depose and swear as follows, that is to say, "by the expression I (meaning himself the said W. C.) have some very choice paper forty years old (meaning the said expression contained in the above-mentioned letter from him the said W. C. to the said G. C. dated W. 6th March, 95), this deponent (meaning himself the said W. C.) meant and alluded to some very curious India paper, which (meaning which paper) was made a present of by the late Sir H. P. baronet, to this deponent's (meaning the said W. C.'s) wife, who (meaning the wife of the said W. C. was his (meaning the said Sir H. P.'s) near relation, and which (meaning which paper) this deponent (meaning himself the said W. C.) meant, would make a handsome chimney-board or fire-screen, and by such expression (meaning the said expression) "I have some very choice paper forty years old;" this deponent (again meaning himself the said W. C.) meant such India paper, and no other paper: whereas in truth and in fact, by the said expression, "I have some very choice paper forty years old," the said W. C. did not mean and allude to some very curious India paper, which was made a

Further matter sworn to by defendant.

Assignment of perjury.

present of by the late Sir H. P. to the wife of the said W. C. : and whereas in truth and in fact, the said W. C. did not mean that the said paper would make a handsome chimney-board or fire-screen ; and whereas in truth and in fact, by the said expression, “ I have some very choice paper forty years old,” the said W. C. did not mean the said India paper above-mentioned, to have been given to the wife of the said W. C. by the said Sir H. P. ; and so, &c. [*as ante*, 320.]

For perjury in an affidavit in writing, sworn before a commissioner, in a cause depending in C. B. in which the party indicted was plaintiff (a).

That on, &c. a certain suit was depending in the court of our said lord the king before Sir W. D. G. and his companions, then his majesty's justices of the bench at Westminster, between A. B. plaintiff and C. D. defendant, and the said A. B. contriving and intending to aggrieve and injure the said C. D. on the said, &c. at, &c. did come in his own proper person before J. N. gentleman, then and there being a commissioner duly authorized and empowered to take affidavits in the court aforesaid, and did then and there make and exhibit to the said J. N. a certain affidavit in writing of him the said A. B. in the said suit between the said A. B. and the said C. D. being then depending in the said court of our said lord the king, before his majesty's said justices of the bench at Westminster aforesaid (b) ; and then and there as aforesaid in the said county of O. before the said J. N. was duly sworn and took his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit, (the said J. N. then and there having a lawful and competent authority to administer the same oath to the said A. B. and to take and receive the aforesaid affidavit,) and then and there the said A. B. not having, &c. but being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the punishment therein contained, did before the said J. N. having a competent authority to administer an oath to the said A. B. in that behalf, falsely and voluntarily and corruptly upon his said oath depose and swear in writing as follows, viz. In the Common Pleas, A. B. plaintiff, and C. D. defendant, A. B. of, &c. (*setting out the whole of the affidavit*) as by the said oath of the said A. B. in writing, remaining of record in the said court of our said lord the king of the bench at Westminster aforesaid, it more fully appears. Whereas, in truth and in fact, &c. (*denying*

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(a) See 4 Wentw. 277.

an averment of materiality,

(b) *Quare*, There should be *ante*, 307.

every part of the affidavit on which the defendant is indicted); and so the jurors aforesaid, upon their oath aforesaid, say, &c. [*as before, 320.*]

Surrey. That before and at the time of making of the affidavit, and taking the oath hereinafter mentioned, to wit, on, &c. one A. B. was a prisoner in the custody of the marshal of the marshalsea of our said lord the now king, before the king himself, in execution of a certain judgment, before that time, to wit, in Trinity term, in the twenty-seventh of, &c. obtained in the court of our said lord the king, before the king himself, at W., in the county of M., against the said A. B., at the suit of C. D. for the sum of £24. in a certain cause before that time commenced and prosecuted in the same court, wherein the said C. D. was plaintiff, and the said A. B. was defendant, to wit, at, &c. And the jurors, &c. further present, that the said A. B., so being in such custody as aforesaid, he the said A. B. contriving, and wickedly and maliciously intending, unjustly to aggrieve, injure, and prejudice the said C. D. and wrongfully and unlawfully to procure and obtain his, the said A. B.'s discharge out of the custody of the marshal, as to the said execution, at the suit of the said C. D. to wit, on the said, &c. at, &c. at a certain place there called the King's Bench prison, within the distance of twenty miles from the city of London, came in his proper person before J. W. gentleman; the said J. W. then being a commissioner of our said lord the king, duly authorized to take affidavits within the city of London, and twenty miles round the said city, in the several counties of Middlesex, Essex, Kent, Surrey, and Hertford, from any person or persons, who, by reason of imprisonment, sickness, or other just impediment, should be hindered from coming before the justices of our said lord the king, before the king himself, made in or concerning any cause, matter, or thing depending in the said court of our said lord the king, before the king himself, or concerning any proceedings in the same court; and the said A. B., then and there being such prisoner as aforesaid, and by reason of such imprisonment hindered from coming before one of the justices of the same court, did then and there exhibit and produce to the said J. W. so being such commis-

For perjury in an affidavit to procure defendant's discharge under the Lord's Act, sworn before a commissioner of K. B. (a).

(a) From the MS. of a gentleman at the bar. The defendant was tried and convicted at the Summer Surrey assizes, A. D. 1789.

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sioner as aforesaid, a certain paper-writing, purporting to be an affidavit in writing of him the said A. B. in the said cause, wherein the said C. D. was plaintiff, and the said A. B. defendant, and the said A.B. then and there in due form of law was sworn, and did take his corporal oath upon the holy gospel of God, of and concerning the truth of the contents of the said paper-writing, before the said J. W. (he the said J. W. then and there being such commissioner as aforesaid, and having then and there a competent authority to administer an oath to the said A. B. in that behalf.) And the jurors, &c. further present, that the said A. B., late of, &c. labourer, being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and disregarding, &c. and contriving, and intending as aforesaid, then and there, to wit, on, &c. at, &c. in the said place, there called the King's Bench prison, upon his oath aforesaid, in and by the said paper-writing, before the said J.W., (he the said J.W. then and there being such commissioner, and having such authority in that behalf as aforesaid,) falsely, wickedly, knowingly, maliciously, and corruptly, did say, depose, swear, and make affidavit in writing, among other things therein contained, in substance, and to the effect following, that is to say, that in Hilary Term last, (being Hilary Term, in the 28th year aforesaid,) he was brought into this honorable court, (meaning the said court of our said lord the king, before the king himself,) under the lord's act, that he then received the sum of 2s. and 4d., and continued to receive the same, on Monday in every week, until Monday the 4th of August last, (being the 4th of August, in the 28th year aforesaid,) when the aforesaid plaintiff (meaning the said C. D.) neglected to pay the same nor hath this deponent (meaning the said A. B.) received the said weekly sum of 2s. 4d., at any time since this defendant, (meaning the said A. B.,) positively on his oath denies, nor has he (meaning the said A. B.,) any knowledge of, or that he, (meaning the said A. B.,) was in any manner concerned, either directly or indirectly, in causing or procuring G. H., servant to the said plaintiff, (meaning the said C. D.) to be arrested on Monday, the 4th August last, (meaning the 4th of August, in the 28th year aforesaid,) in order to prevent his (meaning the said G.H.'s) coming to pay the weekly sum of 2s. 4d. for the use of him the said A.B., (meaning the said A.B.,) nor was the same (meaning the arrest of the said G. H.,) so done with the knowledge, privity, or procurement of this defendant, (meaning the said A.B.,) he being an entire stranger to all the parties

concerned in such transaction, (meaning in causing and procuring the said G.H. to be arrested as aforesaid,) whereas, in truth and in fact, the said A.B. at the time of taking his said oath, and making his said affidavit as aforesaid, well knew, and was well apprised that the said G.H. was to be arrested on the said Monday, the said 4th of August, in the 28th year aforesaid, in order to prevent his the said G.H.'s coming to the said place, called the K. B. prison, to pay the said weekly sum of 2s. 4d., for the use of him the said A.B., to wit, at, &c. aforesaid; and whereas, the said A.B., before the taking, &c. to wit, on the said 4th of August, in the 28th year aforesaid, was concerned in causing and procuring the said G.H. to be arrested on the said Monday, the said 4th of August, in the 28th year aforesaid, in order to prevent his the said G.H.'s coming to the said place, called the K. B. prison, to pay the said weekly sum of 2s. 4d. for the use of him the said A.B.; and whereas, in truth and in fact, the said G.H. was arrested on the said 4th of August, in the 28th year aforesaid, in order to prevent his coming to the said place, called the K. B. prison, to pay the said weekly sum of 2s. 4d. for the use of him the said A.B., to wit, at, &c. And whereas, in truth and in fact, the said A.B. was not an entire stranger to all the parties concerned in causing and procuring the said G.H. to be arrested as aforesaid, but before and at the time of the taking of the said oath, was well acquainted with the several parties concerned therein, and every of them, to wit, at, &c. aforesaid. And the jurors, &c. further present, that afterwards, to wit, on, &c. the said A.B. caused an application to be made to the court of our said lord the king, before the king himself, the said court then being at Westminster, in the county of Middlesex, in order to obtain and procure a certain rule of the said court to be made, whereby it might be ordered, that the said C.D. upon notice of the said rule, to be given to him, should upon a certain day in the same rule to be mentioned shew cause, why he the said A.B. should not be discharged out of the custody of the said marshal as to the said execution, at the suit of the said C.D. for non-payment of the sum of 2s. 4d. weekly, by the said C.D., pursuant to his undertaking, and that the said A.B. then and there upon the said application to the said court, caused the same affidavit, so by him made as aforesaid, before the said E.F. as aforesaid, to be produced to, and read in the same court, and that the matter therein so falsely sworn by the said A.B. as aforesaid, then and there became and was ma-

terial to the determination of the court upon such application (a),
And so, &c. [*as ante*, 320.]

For perjury by a debtor (at an adjourned general sessions of the peace, holden before the mayor, recorder, and aldermen, at the Guildhall, London) in swearing himself a fugitive (b).

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London. That on, &c. a general session of the peace of our said lord the king was held for the city of L. at the Guildhall, within the said city, before A.B. esq. then mayor of the city of L. J.A. esq. then recorder of the said city, J.S. and T.W. esquires, then aldermen of the said city, and others, their fellows, justices of our said lord the king, assigned to, &c. [*as ante*, 182] and that the same session of the peace was then and there adjourned by the aforesaid justices above-named, and others, their fellows, aforesaid, there, until, &c. And the same session, by divers further adjournments, was duly continued and adjourned, and was held for the said city of L. at the Guildhall aforesaid, by adjournment, on, &c. before the said A.B. esq. being such mayor as aforesaid, the said J.A. esq. being such recorder as aforesaid, C.D. and E.F. esquires, then being aldermen of the said city, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182]. And the jurors, &c. do further present, That on, &c. at the parish of St. Michael Bassishaw, in the ward of Bassishaw, in L. aforesaid, at the said general session of the peace, so holden by adjournment as aforesaid, at the Guildhall aforesaid, before the said justices of our lord the king, last above named, and others their fellows, aforesaid, came in his proper person, as a debtor, actually beyond the seas in foreign parts, on, &c. and as one who had since returned and surrendered himself unto the gaoler or keeper of the prison of the Fleet of our said lord the king, and according to the form of the statute, made in the eighteenth year of our sovereign lord king George the Third, intituled, &c. W.M. late of, &c. being brought by the warden of the said prison of the Fleet (then being gaoler and keeper of the said prison) by virtue of a warrant under the hand and seal of J.S. esq. then and still being one of the aldermen of the said city, and then and still also being one of the justices of our said lord the king, assigned, &c. [*as ante*, 182] and that the said W.M. so being brought and coming before the justices last aforesaid, at the said general session of the peace, so then and there holden by adjournment as aforesaid, he the said W.M.

(a) This averment of the affidavit having been used is not necessary at common law, *ante*, 320.

(b) See Cro. C. C. 7th edit. 506.

then and there holden by adjournment as aforesaid, he the said W.M. then and there in open court did take his corporal oath upon the holy gospel of God (the said justices and the court aforesaid, having sufficient and competent power and authority to administer the said oath to the said W.M. in that behalf) and that the said W.M. not having, &c. but being moved and seduced, &c. and nowise regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, but wickedly intending, by colour and pretext of the said act of parliament, to deceive and defraud one W.S. then and long before, and still being a creditor of the said W.M. and divers others, the creditors of the said W.M. (whose names to the jurors aforesaid are as yet unknown) of their just debts, growing due before the said, &c. then and there, to wit, on the said, &c. with force and arms, at, &c. aforesaid, that is to say, at the said general session of the peace, then and there holden by adjournment as aforesaid, before the said justices of our said lord the king, last above named, and others their fellows aforesaid, upon his oath aforesaid, falsely, maliciously, wilfully, corruptly, and feloniously did say, swear, protest, and declare, (among other things) that he the said W. M. was actually on, &c. beyond the seas in foreign parts, that is to say, at R. (meaning R. in H.) whereas in truth and in fact, he the said W. M. was not actually on, &c. at R. in H. and whereas in truth and in fact, the said W. M. was not actually on, &c. at R. beyond the seas in foreign parts, and whereas in truth and in fact, the said W. M. was not actually on, &c. beyond the seas in foreign parts, and so the jurors, &c. do say, that the said W. M. then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, in the court of the said open session, before the same justices last above named, and others, their fellows aforesaid (they the said last-mentioned justices, their said fellows, and the court aforesaid, so having sufficient and competent power and authority to administer the said oath to the said W.M.) by his own act and consent, and of his own most wicked and corrupt mind and disposition in manner and form aforesaid, did falsely, wickedly, wilfully, *feloniously*, and corruptly commit wilful and corrupt perjury, to the great displeasure, &c. to the evil and pernicious example, &c. against the peace, &c. and also against the form of the statute in such case made and provided.

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For perjury in swearing that he had served a person with a ca. ad resp. out of the palace court.

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London. That heretofore, to wit, on, &c. a certain action had been commenced, and was then depending in the court of the king's palace of Westminster, held at Southwark in the county of Surrey, and within the jurisdiction of the said court, before I. K. then steward of the king's household, L. M. then marshal of the said household, and N. O. then steward of the said court, then judges of the said court, by virtue of the letters patent of Charles II. late king of England, &c. bearing date at W. on, &c. and a certain writ of our said lord the king called a *capias ad respondendum* had issued out of the said court in the said action of J. R. and against J. T. And the jurors, &c. do further present, that whilst the said action was so depending in the said court, to wit, on, &c. aforesaid, at L. aforesaid, to wit, at the parish of — in the ward of —, J. C. late of, &c. came in his own proper person before W. B. then and there being prothonotary of the said county, of the king's palace aforesaid, and then and there did produce and exhibit to and before the said W. B. so being such prothonotary as aforesaid, a certain affidavit in writing of him the said J. C. (a) and he the said J. C. then and there in due form of law was sworn, and did take his corporal oath upon the holy gospel of God, touching and concerning the truth of the matters in that affidavit contained, before the said W. B. then and there being such prothonotary as aforesaid, and then and there having sufficient and competent power and authority to administer an oath to the said J. C. in that behalf; and that the said J. C. then and there, upon his aforesaid oath, taken before the said W. B. as aforesaid, did swear, that the contents of his affidavit were true, and that the said J. C. so being so sworn, not having, &c. but being moved and seduced, &c. and little regarding the laws of this realm, or the penalties in the same contained, but esteeming his oath as aforesaid as nothing, then and there in his affidavit aforesaid, falsely, wilfully, and corruptly, did say and swear in these words following, that is to say, Pal. Court (meaning the said court of the king's palace aforesaid,) J. R. (meaning the said J. R.) plaintiff, and J. T. (meaning the said J. T.) defendant, J. C. of, &c. (meaning the said J. C.) maketh oath, that he this deponent, (meaning the said J. C.) did serve the above-named defendant (meaning the said J. T.) with a writ of *capias* (meaning the said writ of

(a) *Quare*, if there ought not to be an averment of materiality, ante, 307.

capias ad respondendum, issuing out of the court aforesaid,) at the suit of the above-named plaintiff (meaning the above-named J. R.) by delivering to the said defendant (meaning the said J. T.) a true copy of said writ (meaning the said writ of *capias ad respondendum*,) before the return thereof, and within the jurisdiction of this court (meaning the court aforesaid,) and under said copy was a notice in print and writing for the said defendant (meaning the said J. T.) to appear by his (meaning the said J. T.'s) attorney, at the return thereof, pursuant to the act of parliament, J. C. Whereas in truth and in fact the said J. C. did not serve the said J. T. with a writ of *capias*, issuing out of the said court of the king's palace aforesaid, at the suit of the said J. R. against the said J. T. by —, delivering to the said J. T. a true copy of said writ, before the return thereof, and within the jurisdiction of the said court, and whereas in truth and in fact, J. C. did not serve the said J. T. with a writ of *capias*, issuing out of the said court, at the suit of the said J. R. in any manner whatsoever, and so, &c. [*as ante*, 320.]

IN CIVIL PROCEEDINGS—ON INQUIRY OR TRIAL.

That T. L. late of, &c. farrier, on, &c. at the castle of N. in the shire-house there, in the said county of N. in his own proper person, came before L. M. esq. then and still being sheriff of the said county, and was produced and examined as a witness on the part and behalf of one T. D. and one C. D. upon the execution of a certain writ of inquiry of damages, before that time issued out of his majesty's court of Common Pleas at W. in the county of M. and directed to the said sheriff of N. in and concerning a certain plea of trespass and assault, in which one J. P. was the plaintiff, and the said T. D. and C. D. were the defendants, and by which said writ the said sheriff was commanded, that by the oath of twelve honest and lawful men of his county, he should diligently inquire what damages the said J. P. had sustained, as well by reason of the said trespass and assault, as for his expences and costs laid out

For perjury in giving evidence upon executing a writ of inquiry before sheriff (a).
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(a) See this form, Cro. C. C. more concise, see notes, ante, 8th edit. 360; see next form 302 to 318.

by him about his suit in that behalf. And the jurors, &c. do further present, that the said T. L. did then and there, to wit, in the shire-house aforesaid, before the said L. M. sheriff as aforesaid, take his corporal oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters then in question between the said parties (he the said L. M. sheriff as aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said T. L.) And the jurors, &c. do further present, that upon the execution of the said writ of inquiry, certain questions, then and there became and were material, that is to say, "whether, &c." (here set out the questions upon the answers to which the perjury is afterwards assigned,) and that the said T. L. being so sworn as aforesaid, and unlawfully, wickedly, and maliciously contriving, devising, designing, and intending to induce the jurors of a certain jury, summoned, and then and there duly sworn, to inquire of the truth of the premises aforesaid, to find and give small and inconsiderable damages for the said J. P. the plaintiff aforesaid on that inquest, and unjustly designing and intending to aggrrieve, injure, and prejudice the said J. P. and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, to wit, on the said, &c. at the castle of N. aforesaid, in the said shire-house there, in the said county of N. before the said L. M. being such sheriff as aforesaid, upon his said oath so taken as aforesaid, falsely, knowingly, wickedly, maliciously, wilfully, and corruptly, by his own act and consent, upon the execution of the said writ, did say, depose, affirm, and give in evidence, amongst other things, before the said L. M. being such sheriff as aforesaid, and to and before the jurors of the said jury, summoned to inquire as aforesaid, in substance and to the effect following, that is to say, that, &c. [*Here set out the matter falsely sworn to, and the assignment of perjury, as usual, and as post, 353, and then conclude as ante, 320.*]

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The like in a more concise form (u).

That on, &c. at, &c. a certain writ of inquiry in a certain cause, in which F. G. was plaintiff, and H. I. the defendant, came on to be executed, and was then and there executed before M. N. esq. then being sheriff of the said county, and that A. B. late of, &c. labourer, did then and there before the said

(u) See ante, 349, and the notes ante, 302 to 318.

L. M. take his oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters there in question between the said parties, he the said L. M. as such sheriff as aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said A. B. (a), and that the said A. B. being so sworn as aforesaid, unlawfully, wickedly, and maliciously contriving, devising, designing, and intending to induce the jurors of a certain jury summoned, and then and there duly sworn, to inquire of the truth of the premises aforesaid, to find and give small and inconsiderable damages for the said F. G. the plaintiff aforesaid, on that inquest, and unjustly designing and intending to aggrieve, injure, and prejudice the said F. G. then and there, to wit, on, &c. at, &c. before the said M. N. being such sheriff as aforesaid, upon his said oath so taken as aforesaid, upon the occasion aforesaid, falsely, wickedly, maliciously, wilfully, and corruptly did say, depose, affirm, and give in evidence before the said L. M. being such sheriff as aforesaid, and to and before the jurors of the said jury, summoned to inquire as aforesaid, that [*set out the matter falsely sworn, and the assignments of perjury, and conclude as post, 353.*]

Middlesex. That heretofore, to wit, in Michaelmas term, in the forty-fifth year of, &c. in the court of our said lord the king before the king himself, the same court then (c) and still being held at Westminster in the county of Middlesex, amongst the pleas of the said term, a certain issue (d) was duly joined in the said court of our said lord the king before the king himself, between M. J. the plaintiff, and J. H., J. S., J. C., and T. L. defendants, in a certain action of trespass, assault, and false imprisonment, which action before that time had been commenced between the parties in that behalf, in the said court of our said lord the king before the king himself, and that afterwards, to wit, at the Sitting of Nisi Prius holden for the county of Middlesex, on, &c. at Westminster aforesaid, in the

For perjury by a witness on a trial in the King's Bench at Westminster at the sittings in term (b).

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(a) *Quære*, if there should not be an averment of materiality, see ante, 307.

(b) This indictment was found against Martha Howard, A. D. 1806, and framed by an emi-

nent crown lawyer, ante, 302 to 318.

(c) If after term, this allegation should be omitted, 5 Burr. 2586. See 5 J. B. Moore, 538. 2 B. & B. 659. S. C.

(d) See note (d), post, 353.

great hall of pleas there commonly called Westminster-hall (a), before Edward Lord Ellenborough, then and yet chief justice of our said lord the king, assigned to hold pleas in the said court of our said lord the king before the king himself, by form of the statute and so forth, the same issue came on to be tried, and then and there was tried in due form of law by a jury of the said county of Middlesex in that behalf duly taken and sworn between the said parties; and that upon the trial of the said issue, one M. H. late of the parish of St. Margaret, within the liberty of Westminster, in the county of Middlesex, spinster, did then and there, to wit, on the said 4th day of December, in the forty-fifth year aforesaid, at the said parish of St. Margaret within the liberty of Westminster in the said county of Middlesex, appear and was produced as a witness for and on the behalf of the said M. J., and that the said M. H. did then and there, before the said Edward Lord Ellenborough, the chief justice aforesaid, take her corporal oath, and was then and there duly sworn upon the holy gospel of God, that the evidence which she the said M. H. should give to the court and jury sworn between the parties aforesaid, touching the matters in question on the said issue, should be the truth, the whole truth, and nothing but the truth (he the said Lord Ellenborough, the chief justice aforesaid, then and there having competent power and authority to administer the said oath to the said M. H. in that behalf); and then and there upon the trial of the said issue it became a material question, whether the said J. H., J. S., J. C., and T. L. or either of them, had struck the said M. J., or had dragged her by the hair of her head; and that thereupon the said M. H. being so produced and sworn as aforesaid, devising and wickedly intending to cause and procure a verdict to pass against the said J. H. for the said M. J. on the trial of the said issue, and not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, did then and there, to wit, on the said, &c. at the parish of St. Margaret, &c. aforesaid, before the said Edward Lord Ellenborough, the chief justice aforesaid, falsely, maliciously, wilfully, wickedly, and corruptly, and by her own proper act and consent depose, swear, and give evidence, amongst other things, to the jurors of the said jury so sworn between the said parties as aforesaid, in substance

(a) This is material, see ante, 307, 8.

as follows: that the defendant H. (meaning the said J. H.) dragged the plaintiff M. J. by the hair of her head on the ground from her own door in St. Catharine's Lane, as far as Wilkinson's the butcher; whereas in truth and in fact, the said J. H. did not drag the plaintiff M. J. by the hair of her head, on the ground, from her own door, in Catharine's Lane, as far as Wilkinson's the butcher; and whereas in truth and in fact, the said J. H. did not drag the plaintiff M. J. by the hair of her head at all. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said M. H. at and upon the said trial of the said issue, on the said 4th day of December, in the 45th year aforesaid, at the parish of St. Margaret, within the liberty aforesaid, in the county aforesaid, before the said Edward Lord Ellenborough, the chief justice aforesaid, so as aforesaid having sufficient power and authority to administer the said oath to the said M. H. in that behalf, by her own proper act and consent, and of her own most wicked and corrupt mind, in manner and form aforesaid, did falsely, wickedly, and corruptly upon her oath aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the manifest perversion of justice, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

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Middlesex. That at the Sitzings of Nisi Prius, holden after the term of Saint Hilary, on, &c. at Westminster, in the county of Middlesex, in the great hall of pleas there, called Westminster-hall, according to the form of the statute in such case made and provided (*b*), before William Earl of Mansfield, then being chief justice of our said lord the king, assigned to hold (*c*) pleas in the court of our said lord the king, before the king himself, a certain issue (*d*) duly joined in the said court, between one A. B. and one C. D. in a certain plea of

The like in another form (*a*).

(*a*) See Cro. C. C. 351. Ante, notes 302 to 318.

(*b*) 24 Geo. 2. c. 18. s. 5; but this allegation is omitted in 2 Stark. 521.

(*c*) See 2 Stark. 521, "the pleas."

(*d*) In 2 Stark. 521, it is termed "cause;" but afterwards

"the said issue." Issue is proper, though there be two counts in the declaration, ante, 307; but if there be several pleas and distinct issues, it will be proper to state the proceedings in the plural accordingly, ante, 307. Peake Rep. 37.

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trespass on the case upon promises, in which the said A. B. was the plaintiff, and the said C. D. was the defendant, came on to be tried in due form of law, and was then and there tried by a certain jury of the country in that behalf duly sworn and taken between the parties aforesaid. And the jurors aforesaid, now here sworn upon their oath aforesaid, do further present, that at and upon the trial of the said issue so joined between the parties aforesaid, Z. A. late of, &c. appeared as a witness for and on the behalf of the said A. B. the plaintiff, in the plea above-mentioned, and was then and there duly sworn and took his corporal oath upon the holy gospel of God, before the said earl of M. chief justice as aforesaid, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters in question in the said issue (he the said earl of M. chief justice as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said Z. A. in that behalf.) And the jurors, &c. do further present, that at and upon the trial of the said issue so joined between the parties aforesaid, certain questions then and there became and were material, that is to say, whether he the said Z. A. had any conversation with the said C. D. the defendant in the plea above-mentioned, on, &c. to wit, on, &c. touching the matters in question in the said issue, and also whether the said Z. A. did on that day, to wit, the same, &c. last aforesaid, deliver a paper-writing, purporting to be an account settled between the said A. B. and the said C. D. respecting the matters in question in the said issue; and the said Z. A. being so sworn as aforesaid, not having the fear of God before his eyes, nor regarding the laws of this realm, but being moved and seduced by the instigation of the devil, and contriving and intending as much as in him lay, to prevent justice, and pervert the due course of law, and to cause a verdict to pass against the said C. D. on the trial of the said issue, and thereby to subject him the said C. D. to the payment of sundry heavy costs, charges, and expences, then and there, to wit, on the said, &c. at Westminster aforesaid, on the trial of the said issue upon his oath aforesaid, knowingly, falsely, wickedly, wilfully, maliciously, and corruptly, and by his own act and consent, did say, depose, swear, and give evidence (amongst other things) to and before the said jurors so sworn to try the said issue as aforesaid, and the said earl of M. the chief justice aforesaid, in substance and to the effect following, that is to say, that he the said Z. A. had, on the 10th day of November

last (meaning the said 10th day of November, in the 21st year aforesaid,) a conversation with the said C. D. in the house of one P. J. at I. (meaning Islington, in the said county of Middlesex), respecting the affair (meaning the matters in question in the said issue); and that he the said Z. A. did at the same time (meaning the time of the supposed conversation so by the said Z. A. alleged to have been had in the said house of the said P. J. as aforesaid), deliver from the said A. B. an account in writing (meaning an account in writing, as settled between the said A. B. and the said C. D. respecting the matters in question in the said issue), to the said C. D. who said very well, and then received (meaning that the said C. D. at the time of the said supposed conversation received) it, (meaning the said supposed account) from the hands of him the said Z. A. Whereas in truth and in fact, he the said Z. A. had not, on the said, &c. any conversation whatsoever with the said C. D. at or in the said house of the said P. J. at I. or elsewhere, respecting the affair, that is to say, the matters in question in the said issue, or respecting any matter whatsoever; and whereas in truth and in fact, he the said Z. A. did not, on the said, &c. aforesaid, in the said house of the said P. J. at I. aforesaid, or at any other time or place in the said month of November, in the twenty-first year aforesaid, or at any other time, deliver any paper-writing, purporting to be an account as settled between the said A. B. and the said C. D. respecting the matters in question in the said issue, or any account whatsoever to the said C. D.; and whereas in truth and in fact, he the said C. D. did not, on the said, &c. or at any other time whatsoever, at or in the said house of the said P. J. at I. aforesaid, or at or in any other place, receive an account in writing respecting the matters in question in the said issue, or any account whatsoever, from the hands of him the said Z. A.; and whereas in truth and in fact, he the said Z. A. never had any conversation with the said C. D. at any time or place whatsoever, before the said fourteenth day of February, on which the said issue was so tried as aforesaid. And so, &c. [*as ante*, 353.]

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That at the Sittings of Nisi Prius, holden after the term of Saint Hilary, at the Guildhall of the city of London, in and for the said city of London, on Tuesday, &c. before Francis

For perjury at the trial of an action of ejectment in K. B. at sittings after term in London (a).

(a) See form, Cro. C. A. to 355, and notes, ante, 302 316, and precedents, ante, 351 to 318.

[356] Buller, esquire, being one of his majesty's justices assigned to hold pleas in the court of our said lord the king, before the king himself, a certain issue before then duly joined in a certain action of trespass and ejectment of farm then lately depending in the said court of our said lord the king, before the king himself, (the said court then and still being at W. in the county of M.) (a), in which said action one John Doe, on the demise of R. J., was the nominal plaintiff, and one J. W. was defendant, in due form of law came on to be tried, and was then and there tried by a certain jury of the country, in that behalf duly sworn and taken between the parties aforesaid. And the jurors aforesaid, now here sworn, upon their oath aforesaid, do further present, that upon the trial of the said issue between the parties aforesaid, so joined as aforesaid, it became, and was a material question between the said parties, whether any rent had been before that time paid to, and received by, the said R. J., the said lessor of the said John Doe, the nominal plaintiff in that action, for one messuage, &c. [*state the names and situations of the premises in the declaration of ejectment,*] the said premises then in question in the said issue so joined between the said parties as aforesaid, or not. And the jurors, &c. do further present, that S. C. late of, &c. carpenter, not having, &c. but being moved and seduced by the instigation of the devil, and intending unjustly to aggrieve the said R. J., the lessor of the said J. Doe, the nominal plaintiff in that action, and wickedly to cause and procure a verdict to pass against the said John Doe, the nominal plaintiff aforesaid, upon the said issue so joined between the said parties as aforesaid, and to subject the said R. J. the lessor of the said J. Doe, the nominal plaintiff aforesaid, to the payment of costs to the said J. W. the defendant in that action, on the said, &c. at the parish of Saint Michael Bassishaw, in the ward of Bassishaw, in London aforesaid (b), came into the said court, holden in the Guildhall of the city, before the said F. B. esquire, the justice above-mentioned, and appeared as a witness for, and on behalf of the said B. J. the lessor of the said John Doe, the nominal plaintiff aforesaid, and then and there, before the said F. B. esquire,

(a) This allegation seems unnecessary, and sometimes dangerous, ante, 351.

(b) In the original precedent, Cro. C. A. 317, the ve-

nue as to parish is improperly omitted, see ante, 307, 8, the place of swearing should be described as post, 353.

the justice aforesaid, in the same court, at the parish of, &c. aforesaid, in the ward of, &c. aforesaid, did take his corporal oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the premises in the said issue so joined between the said parties as aforesaid, (he the said F. B. esquire, the justice aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said S. C. in that behalf,) and the said S. C. being so sworn as aforesaid, did then and there falsely, corruptly, wilfully, injuriously, and maliciously say, depose, and give in evidence, to and before the said jury, so as aforesaid sworn, and taken between the parties aforesaid, and the said F. B. esquire, the justice aforesaid, that he (meaning himself, the said S. C.) knew nothing about any rent being paid, &c. [*here set out the matter sworn to, and the assignments of perjury, according to the fact, and conclude as ante, 353.*]

That heretofore, to wit, on Saturday next, after three weeks from the day of Easter, in Easter term, in the second year of the reign of our sovereign lord George the Third, king of Great Britain, &c. in the court of our said lord the king, before the king himself, (the said court then *(b)* and still being at Westminster, in the said county of Middlesex,) a certain issue directed by the present lord high chancellor of Great Britain, in due manner joined, touching and concerning the validity of a certain will and codicil of one W. B. deceased, in which said issue, B. L. esquire, was the plaintiff, and E. Y. esquire, the defendant, in due manner came on to be tried, and was then and there tried, in due form of law, by a certain jury of the country, in that behalf duly sworn and taken between the said parties. And the jurors aforesaid, now here sworn upon their oath aforesaid, do further present, that upon the trial of the said issue, it then and there became, and was made a material question between the said parties, whether the said W. B. at the time of signing, sealing, and publishing the said will, was of such sound and disposing mind as to be capable of making a will or not. And the jurors, &c. that C. D. late of, &c. not having, &c. but being moved and seduced, &c. and intending

For perjury on trial in K. B. of an issue at bar, directed out of the Court of Chancery *(a)*.

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(a) See form, Cro. C. C. 8th edit. 360. (b) See ante, 351.

unjustly to aggrieve the said B. L. the plaintiff above-named, and wickedly to cause and procure a verdict to pass against the said B. L. the said plaintiff, on the said issue so joined as aforesaid, on the said Saturday next after three weeks from the day of Easter aforesaid, in the second year aforesaid, at Westminster aforesaid, in the county aforesaid, came into the said court of our said lord the king, before the king himself, and appeared as a witness for and on the behalf of the said E. Y. the defendant aforesaid, in the said issue, and then and there, in and before the said court, did take his corporal oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the premises in the said issue so joined as aforesaid (the said court then and there having sufficient and competent power and authority to administer the said oath to the said C. D.) and the said C. D. being so sworn as aforesaid, then and there, upon the trial of the said issue, in and before the same court, falsely, knowingly, wickedly, wilfully, and corruptly did say, depose, and give in evidence to the said court, and to the jurors of the said jury, so taken between the said parties as aforesaid, that the said W. B. at the time of signing, sealing, and publishing his said will, was not capable of making a will; whereas, in truth and in fact, the said W. B. at the time of signing, sealing, and publishing his said will, was capable of making a will; and whereas, in truth and in fact, the said C. D. at the time he gave such evidence as aforesaid, well knew that the said W. B. at the time of signing, sealing, and publishing his said will, was capable of making a will; and whereas, in truth and in fact, the said C. D. at the said time he so gave such evidence as aforesaid, had no reasonable or probable cause or pretence whatsoever, to say or depose that the said W. B. at the time of signing, sealing, and publishing his said will, was not capable of making a will. And so, &c. [*as ante*, 353.]

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For perjury on a
trial in C. P. at
Guildhall, Lon-
don, against a
person sworn as
Jew (*a*).

London. That heretofore, to wit, in Trinity term, in the forty-seventh year, &c. a certain cause (*b*) wherein one S. S. was plaintiff, and one I. A. an infant, by A. A. his guardian, was

(*a*) This indictment against Saul Mordecai, sworn as a Jew, A. D. 1807, was drawn by an eminent crown lawyer. See precedent, *ante*, 351 to

357, and notes, *ante*, 302 to 318.

(*b*) *Ante*, 353, note (*d*), as to "issue," &c.

defendant, was depending in the court of our lord the king of the Bench, at Westminster, in the county of Middlesex; and such proceedings were thereupon had, that a certain issue (a), in due manner joined in the said cause, between the said S. S. and I. A. came on to be tried, and was in due form of law tried at the Sittings of Nisi Prius held at the Guildhall, in and for the city of London, on, &c. before the right hon. Sir James Mansfield, knight, chief justice of our said lord the king of his said court of the Bench. And that at and upon the said trial of the said issue, one S. M. late of, &c. did then and there, to wit, on the same, &c. aforesaid, at London, that is to say, at the parish of Saint Michael Bassishaw, in the ward of Bassishaw, in London aforesaid, appear, and was produced as a witness, for and on the behalf of the said S. S.; and the said S. M. then and there before the said Sir J. M. the chief justice aforesaid, did take his corporal oath as such witness as aforesaid (b), and was then and there duly sworn that the evidence which he, the said S. M. should give to the court and jury sworn between the parties aforesaid, touching the matters in question on the said issue, should be the truth, the whole truth, and nothing but the truth (he, the said Sir James Mansfield, the chief justice aforesaid, then and there having competent power and authority to administer the said oath to the said S. M. in that behalf), and then and there, upon the trial of the said issue, it became a material question whether the said S. M. about two years from that time, when he lived in a house adjoining the house where the said I. A. then lived, overheard a conversation held in the said house of the said I. A. between the said I. A., one S. A. the father of the said I. A. one E. the wife of the said S. A. the mother of the said I. A. one I. I. uncle to the said I. A. and an aunt of the said I. A. about nine o'clock in the morning, when they communed to, with, and amongst each other, and ultimately said and concluded, that the said I. A. was a minor under age, and when the said S. A. and E. A. said that they had a person to prove that the said I. A. was a minor under age, and that the said I. A. might get what he could upon credit, and pay nobody, and thereupon the said S. M. being so produced and sworn as aforesaid, unlawfully devising and wickedly intending to cause and pro-

(a) Ante, 353, note (a). gospel of God, &c." see ante,

(b) Being sworn as a Jew it 309.
is not stated "upon the holy

cure a verdict to pass against the said I. A. on the trial of the said issue, and not having, &c. but being moved and seduced, &c. then and there, to wit, on the same, &c. aforesaid, at, &c. aforesaid, before the said Sir J. M. the chief justice aforesaid, in open court upon the trial of the said issue, upon his said oath as such witness as aforesaid, falsely, wilfully, wickedly, maliciously and corruptly did say, depose, swear and give evidence in substance and to the effect following; that is to say, that about two years before that time when he the said S. M. lived in a certain house or room adjoining the house where the said I. A. then lived, he the said S. M. overheard a conversation held in the said house of the said I. A. between the said I. A., the said S. A., the said E. A., the said I. I. and an aunt of the said I. A. about nine o'clock in the morning, when they communed to, with, and amongst each other, and ultimately said and concluded that the said I. A. was a minor under age, and that the said S. A. and E. A. then said that they had a person to prove that the said I. A. was a minor under age, and that the said I. A. might get what he could upon credit and pay nobody. Whereas in truth and in fact the said S. M. did not, about two years before he was so sworn as aforesaid, or at any other time, overhear a conversation held in the house where the said I. A. lived, between the said I. A., the said S. A., the said E. A., the said I. I. and any aunt of the said I. A. when they communed with each other, and ultimately said and concluded that the said I. A. was a minor under age, and when the said S. A. and E. A. said that they had a person to prove that the said I. A. was a minor under age, and that the said I. A. might get what he could upon credit, and pay nobody; and whereas in truth and in fact the said S. M. never did hear any conversation any where between the said I. A., S. A., E. A., I. I. and an aunt of the said I. A. when they communed with each other respecting the age of the said I. A. and concluded that the said I. A. was a minor under age; and whereas in truth and in fact no meeting or conversation ever took place between the said I. A., S. A., E. A., I. I. and any aunt of the said I. A. when they communed with each other respecting the age of the said I. A. and said or concluded that he was a minor under age. And so the jurors aforesaid, upon their oath aforesaid, do further present that the said S. M. on the same day and in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, at and upon the trial of the said issue upon his oath aforesaid, before

the said Sir J. M. the chief justice aforesaid, so as aforesaid, having sufficient power and competent authority to administer an oath to the said S. M. in that behalf, falsely, wickedly, wilfully and maliciously in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil example of all other persons, to the manifest perversion of justice, in contempt of our said lord the king and his laws, to the great damage of the said I. A. and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present that heretofore, to wit, at the Sittings of Nisi Prius holden after the term of the Holy Trinity, in the forty-seventh year aforesaid, to wit, on, &c. aforesaid, at London, that is to say, at the parish of Saint Michael Bassishaw, in the ward of Bassishaw in London aforesaid, before the said Sir J. M. the chief justice aforesaid, a certain issue before then duly joined in a certain action (*a*) depending in the said court of our said lord the king, of the bench, wherein the said S. S. was plaintiff, and the said I. A. by his said guardian was defendant, in due form of law came on to be tried and was then and there duly tried by a jury of the country in that behalf duly taken and sworn between the parties aforesaid, and that at and upon the trial of the said issue the said S. M. did then and there appear, and was produced as a witness for and on the behalf of the said S. S. and was then and there, to wit, on the said, &c. at London, that is to say, at the parish and ward aforesaid, in London aforesaid, before the said Sir J. M. the chief justice aforesaid, duly sworn and did take his corporal oath as such witness as aforesaid, the said Sir J. M. the chief justice aforesaid, then and there having competent power and authority to administer an oath to the said S. M. in that behalf, and that the said S. M. being so sworn as last-aforesaid, it then and there upon the trial of the said issue became a material question whether, &c. [*as in the first count to the end.*]

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Second count.

London. That heretofore, to wit, at the Sittings of Nisi Prius holden after the term of the Holy Trinity at the Guildhall of the city of London, in and for the same city, to wit, at London, in the parish of St. Michael, Bassishaw, in the ward

The like at sittings after term in C. P. in London, on trial of action for escape against warden of Fleet (*b*).

(*a*) See ante, 353, n. (d). as to the allegation of an *issue*, &c. being tried.

(*b*) See precedents, ante, 351 to 359, and notes, ante, 302 to 318.

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of Bassishaw, on, &c. before Alexander Lord Loughborough then and still being chief justice of our said lord the king, assigned to hold pleas in the said court of our said lord the king of the bench at, &c. certain issues before then joined in a certain action of debt then lately commenced and depending in the said court of our said lord the king of the bench aforesaid, wherein one J. G. was plaintiff, and one J. E. then and still being warden of his majesty's prison of the Fleet, was defendant, and which said action was so commenced and depending for the recovery of a certain sum of money upon and by reason of the supposed escape of one R. J. from and out of the custody of the said J. E. so being such warden of the said prison as aforesaid, in due form of law came on to be tried, and were then and there tried by a jury of the country in that behalf duly sworn and taken between the parties aforesaid. And the jurors, &c. do further present, that upon the trial of the said issue between the said parties so joined as aforesaid, it became and was material and necessary to ascertain and determine whether the said R. I. had the rules of the said prison, and whether the said supposed escape of him the said R. J. was with or without the knowledge or consent of one W. M. the deputy warden of the said prison. And the jurors, &c. do further present, that one J. R. late of, &c. not having, &c. but being moved and seduced, &c. and contriving, &c. to aggrieve the said J. E. the defendant in the aforesaid action, and wickedly to cause and procure a verdict to pass against the said J. E. upon the said issue so joined between the said parties as aforesaid, and to subject the said J. E. to the payment of divers large sums of money, heretofore, to wit, on the, &c. at the Guildhall, &c. and at the parish, &c. (a) before the said A. Lord L. so being such chief justice as aforesaid, and then and there before the said chief justice did take his corporal oath upon the Holy Gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the premises in the said issue so joined between the said parties as aforesaid, (he the said A. Lord L. the chief justice aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said J. R. in that behalf,) and the said J. R. being so sworn as aforesaid, then and there before the said chief

(a) Same parish and ward as in last precedent.

justice, falsely, corruptly, wilfully, and maliciously did say, depose, and give in evidence, before the jurors of the said jury so as aforesaid, sworn and taken between the parties aforesaid, that he (meaning, &c.) did not know that he (meaning the said R. J.) had the rules (meaning, &c.) that I (meaning, &c.) had a horse and chaise in the rules, (meaning, &c.) and that M. (meaning said W. M.) called him (meaning said J. R.) in, and delivered to J. (meaning said J. R.) a £100 bank note, and afterwards a £200 bank note. Whereas in truth and in fact the said J. R. at the time of his taking the said oath, and giving the said evidence in manner aforesaid, well knew that the said R. J. had the rules of the said prison; and whereas in truth and in fact the said W. M. did not call the said J. R. in and deliver to the said R. J. a £100 bank note, and afterwards a £200 bank note. And so, &c. [*as ante*, 353.]

That heretofore, to wit, at the sittings of nisi prius, holden after the term of St. Hilary, on, &c. at W. in the county of M. in the great hall of pleas there, called Westminster-hall, according to the form of the statute in such case made and provided, before Sir J. E. knight, then being chief justice of our said lord the king, assigned to hold pleas in the court of our said lord the king of the Bench at W., a certain issue, before then duly joined in the said court, between one F. A. and one R. B. in a certain plea of trespass and assault, came on to be tried in due form of law, and was then and there tried by a certain jury of the country, duly sworn and taken between the parties aforesaid, and that upon the said trial W. N. appeared as a witness on the behalf of the defendant, and was duly sworn and took his corporal oath before the said Sir J. E. he having competent power, &c. And that at and upon the said trial, certain questions became and were material in substance as follows; that is to say, whether he the said F. A. came upon the deck of a certain ship, that is to say, a certain ship called the Francis East Indiaman, in and on board of which the said F. A. and R. B. were at the time of the assaulting of the said F. A. whereof he complained against the said R. B. as such defendant, in the plea aforesaid, he the said R. B. being then the master or commander thereof, and the said F. A. being then and there a servant of the said R. B. and whether he the said F. A. had his hat upon his head, upon such his coming on the said deck, and in such case, whether he the said F. A. had taken the same from or off his head, on that occasion

For perjury on a trial in C. P. at Westminster at sittings after term.

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or not? And that the defendant, late of, &c. being so sworn, &c. at and upon the said trial at the said sitting, on the said, &c. at, &c. aforesaid, falsely, wilfully, voluntarily, and corruptly did say, depose, and swear, amongst other things, in substance to the effect following, that is to say, that the said F. A. came up (meaning, came at the time in that behalf aforesaid,) upon the deck of the said ship, called the Francis East Indiaman, above-mentioned, respecting which the said W. N. as such witness as aforesaid, was then and there, to wit, upon the said trial at W. aforesaid interrogated, with his the said F. A.'s hat on his (meaning the said F. A.'s) head, and then he the said F. A. might have touched his hat, (thereby meaning, that the said F. A. had at the time his hat on his head, and that he might then have touched the same,) but that he the said F. A. did not take it off (meaning that the said F. A. did not at the time in that behalf take his hat from or off his head.) Whereas he the said F. A. did not, at the time in that behalf aforesaid, come upon the deck of the said ship called, &c. and with his hat on his head. And whereas in truth and in fact, he did not come upon the deck with any hat whatsoever on his head, and whereas in truth and in fact the said W. N. did not, nor could at the time, see any hat whatsoever on the head of him the said F. A. upon the deck of the said ship; and whereas in truth and in fact, the said F. A. did not, nor could at the time touch his hat, or any hat whatsoever, on his head, upon the deck of the said ship; and whereas in truth and in fact, the said W. N. well knew, that the said F. A. did not, nor could at the time, &c. touch his hat, or any hat whatsoever, on his head. And so, &c. [*as ante*, 353.]

And the jurors, &c. do further present, that at and upon the said trial of the said issue so joined as aforesaid, certain other questions became and were material, in substance as follows, (that is to say,) whether the said F. A. stood on the deck of the said ship called the Francis East Indiaman, with his the said F. A.'s arms across, or a-kimbo, in an impudent manner, before the said R. B. or not? (that is to say) at the time of the assaulting of the said F. A. whereof he complained against the said R. B. as such defendant in the plea aforesaid. And that he the said W. N. having so appeared, and being so sworn as such witness, as aforesaid, and wickedly devising, and intending, &c. then and there, at and upon the said trial at the said sittings, to wit, on, &c. aforesaid, at, &c. aforesaid, did falsely, wickedly, wilfully, and corruptly say, depose, swear,

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Second count,
assigning perjury
on other answers.

and give evidence, amongst other things, in substance and to the effect following, that is to say, that the said F. A. stood, (meaning, stood at the time of the assaulting of the said F. A.) whereof he complained against the said R. B. as such defendant in the plea aforesaid, on the deck of the said ship called the Francis Indiaman, with his (meaning the said F. A.'s) arms across or a-kimbo, in an impudent manner, before the said R. B.; whereas in truth and in fact, the said F. A. did not, at the time of the assaulting of him the said F. A. whereof he complained against the said R. B. stand on the deck of the said ship, called, &c. with his the said F. A.'s arms across or a-kimbo, in an impudent manner before the said R. B. And whereas the said F. A. did not, at the time in that behalf mentioned, stand on the deck of the said ship, with his, the said F. A.'s arms across or a-kimbo, before the said R. B., and whereas he did not at the time, &c. stand on the deck of the said ship, in an impudent manner, before the said R. B. And so, &c. [*as ante*, 353.]

That on, &c. a certain cause in which C. D. was the plaintiff, and E. F. the defendant, in due manner and form came on to be tried before Sir G. H. knight, then and still being chief justice of our said lord the king of the Common Pleas at W. in the parish of St. M. within the liberty of W. in the county of M., in the great hall of pleas there, by a certain jury, then and there duly impannelled, sworn, and charged to try the said cause, upon which said trial one A. B. late of, &c. labourer, was then and there produced as a witness, on the part of the said defendant in the said cause, and then and there, before the aforesaid chief justice, and the said jury was sworn upon the holy evangelists to speak the truth, the whole truth, and nothing but the truth, of and in the matters then and there depending, (the said Sir G. H. chief justice as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf,) and that the said A. B. then and there falsely, maliciously, voluntarily, and corruptly said, deposed, and gave in evidence to the said jury, that [*state the matter falsely sworn to, and assignments of perjury, and conclude as ante*, 353.]

The like in another form (a).

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(a) See form, Starkie, 513, there should not be an averment of the materiality of the ante, 302 to 318. *Quare*, if question, ante, 309.

For perjury in giving evidence at the trial at Westminster after term, of an information in the Exchequer (a).

That heretofore, that is to say, at the sittings of nisi prius, after Hilary term, holden in the court of our said lord the now king of his Exchequer, at Westminster, in the said county of Middlesex, to wit, in the parish of St. Margaret's, within the liberty of W. in the county of M. on, &c. before Sir J. E. knight lord chief baron of our said lord the king of his court of Exchequer at W. aforesaid, a certain issue in due manner joined, upon a certain information, before that time exhibited in his said majesty's court of Exchequer at W. aforesaid, by R. P. A. esq. his said majesty's attorney-general, who prosecuted for his said majesty in that behalf, against E. W., N. H., and P. C., touching and concerning the seizure and arrest, to the use of his said majesty, as forfeited, of a certain ship or vessel, with her guns, furniture, ammunition, tackle, and apparel, several parcels of tea, several parcels of brandy, several parcels of spirituous liquors called geneva, of the goods, chattels, and merchandize of certain persons, at the time of exhibiting of the said information unknown to the said attorney-general, came on to be tried, and was tried in due form of law by a jury of the said county, duly sworn, between our said lord the king and the said J. W. in that behalf; and upon the said trial of the said information, W. D. late of, &c. mariner, an officer of the customs of our present sovereign lord the king, did then and there appear as a witness for and on behalf of our present sovereign lord the king, and he the said W. D. then and there, before the said Sir J. E. knight, lord chief baron as aforesaid, (he the said Sir J. E. knight, lord chief baron as aforesaid, having full power and competent authority to administer an oath in that behalf) did take his corporal oath, and was then and there duly sworn upon the holy evangelists of God, that the evidence, which he the said W. D. should give to the court and jury sworn, touching and concerning the premises in the said issue, so as aforesaid joined between our said lord the king and the said E. W., &c. should be the truth, the whole truth, and nothing but the truth. And the jurors aforesaid, now here sworn upon their oath aforesaid, do further present, that upon the trial of the said information it became a material and necessary question, whether a little before and at the time of the discovery, seizure, and arrest of

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(a) See this precedent, 4 430. Cro. C. C. 8th edit. 34. Wentw. 239, and a form See notes, ante, 302 to 318. nearly the same, Cro. C. A.

the said ship or vessel, and the said goods, chattels, and merchandize, the said ship or vessel was found within four leagues or twelve miles of the coast of this kingdom, or not? and also whether he the said W. D. was, at any time during that time, within four leagues or twelve miles of the coast of this kingdom, or not? and after the seizure and arrest, at what rate the said ship or vessel sailed towards the coast of this kingdom? and at what time the said ship or vessel arrived at the coast of this kingdom? and at what time the men in the said ship or vessel got on shore? And thereupon the said W. D. being so produced and sworn as aforesaid, devising, and wickedly and maliciously intending to injure, prejudice, and damnify the said E. W. &c. and to subject them unto sundry costs, charges, and expences, and to cause and procure a verdict to pass for our said sovereign lord the king, on the trial of the said information, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there before the said Sir J. E. knight, lord chief baron as aforesaid, did falsely, wilfully, wickedly, and corruptly, and by his own proper act and consent, upon his oath aforesaid, say, depose, swear, and give in evidence among other things, to the jurors of the said jury so sworn, between our said lord the king, and the said E. W. &c. that from the rate of his (meaning the said W. D.'s) sailing and depth of water, &c. [*here set out the matter sworn, and assign the falsity as in the preceding precedents, see precedent, 4 Wentw. 240.*] which said several premises aforesaid, he the said W. D. at the time of the taking the oath aforesaid, there well knew; and so the jurors, now here sworn upon their aforesaid oath, do say, that the said W. D. at and upon the trial of the said information on the said, &c. in, &c. at the parish of, &c. aforesaid, in the said county, before the said Sir J. E. knight, lord chief baron as aforesaid, he the said Sir J. E. knight, lord chief baron as aforesaid, then and there having full and sufficient power and authority to administer an oath to the said W. D. in that behalf, of his own proper act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did falsely, wickedly, and corruptly, upon his oath aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity, &c. [*Second count same as first, except that the information was stated to be between the king and*

J. R. concerning the seizure of several parcels of tea, several parcels of brandy, and several parcels of spirituous liquors called Geneva, of the goods, chattels, and merchandize of certain persons unknown to the said attorneygeneral, on board a certain ship or vessel, &c. &c.]

For perjury on trial of an issue out of C. P. at the assizes (a).

That heretofore, to wit, on, &c. at Chelmsford, in the said county of Essex, at the assizes then and there holden, before the right honorable Lloyd Lord Kenyon, chief justice of our said lord the king (assigned to hold pleas in the court of our said lord the king, before the king himself), and the honorable Sir Nash Grose, knight, one of the justices of our said lord the king (b), assigned to hold pleas before the king himself, justices of our said lord the king assigned to take the assizes for the said county, according to the form of the statute in such case made and provided, a certain issue (c), before then duly joined in an action brought and prosecuted in the court of our said lord the king, before John Lord Eldon and his companions, then justices of our said lord the king of the bench, at Westminster, in the county of Middlesex, by and at the suit of one W.W. as the plaintiff, against one J.S. as the defendant, for the supposed breach of certain promises and undertakings, alleged by the said W.W. to have been made to him by the said J.S., and not performed (d), came on to be tried in due form of law, and was then and there tried by a jury of the country, in that behalf duly taken and sworn between the parties aforesaid. And the jurors, &c. do further present, that upon such trial of the said issue, one S.W., late of, &c. appeared as a witness for and on behalf of the said W.W. the plaintiff in the said action, and the said S.W. was then and there, in open court at the said assizes holden as aforesaid, before the said L., Lord K., and Sir N. G. (e), the justices

(a) See another form, 4 Wentw. 273. Cro. C. C. 8th edit. 353.

(b) Ante, 306, 307. 1 Leach, 150. If one of the barons of the exchequer, say, "one of the barons of the exchequer of our said lord the king," Lil. Ent. 257.

(c) As to the statement of "an issue or issues," see ante, 353, n. (d).

(d) If in trespass for an assault, say, "in a certain plea, to wit, a plea of trespass and assault came on to be tried, &c." but it does not seem necessary to state the form of action. If in debt on a statute, see Cro. C. C. 8th ed. 353.

(e) Sufficient to state before the judge who actually tried the cause, 1 Leach, 150.

aforesaid, duly sworn and took his corporal oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters in question in the said issue, (they the said L., Lord K., and Sir N. G., then and there having sufficient and competent power and authority to administer the said oath to the said S.W. in that behalf.) And the jurors, &c. do further present, that upon the trial of the said issue, certain questions then and there became and were material, (that is to say) whether * five quarters of oats had been bought by the said S.W., of and from the said J.S. or not, and whether the said S.W. had had any dealings with the said J.S. for oats or not, and also whether the said J.S. had said to the said S.W. that he would deliver five quarters of oats at fifty shillings a quarter or not, and whether the said S.W. had, or had not, any reason to think that five quarters of oats were sold to him for his own use by the said J.S. And the jurors, &c. do further present, that the said S.W. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and falsely, wickedly, and corruptly intending to pervert the due course of justice, and to cause a verdict to be passed against the said J.S. on the trial of the said issue, and thereby to subject the said J.S. to the payment of heavy damages, costs, and expences, then and there, to wit, on the said, &c. at, &c. aforesaid, falsely, wickedly, wilfully, maliciously, and corruptly, and by his own act and consent, did say, depose, swear, and give evidence, amongst other things, at and upon the said trial, to and before the said jurors, so sworn to try the said issue as aforesaid, and the justices aforesaid, that “he (meaning himself the said S.W.) never bought five quarters of oats of Mr.S.” (meaning the said J.S.) that “he, (meaning himself the said S.W.) never had any dealings with Mr.S.,” (meaning the said J.S.) and that “Mr.S., (meaning the said J.S.) did not say that he (meaning the said J.S.) would deliver five quarters of oats at fifty shillings,” (meaning at fifty shillings a quarter,) and “that he (meaning the said S.W.) never had any reason to think that five quarters of oats were sold (meaning by the said J.S.) to him (meaning the said S.W.) for his own use;” whereas, in truth and in fact, the said S.W. had before that time, to wit, on, &c. bought five quarters of oats of the said J.S.; and whereas, in truth and in fact, the said S.W. had had dealings with the said J.S. in the purchase of the said five quarters of oats, in man-

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ner aforesaid; and whereas, in truth and in fact, the said J. S. before the sale of the said five quarters of oats to the said S. W., to wit, on the said, &c. had said to the said S. W. that he would deliver to the said S. W. five quarters of oats, at fifty shillings per quarter; and whereas, in truth and in fact, the said S. W. at the time of his so giving evidence as aforesaid, had reason to think, and then actually knew that the said five quarters of oats were sold to him for his own use by the said J. S. And so the jurors aforesaid, now here sworn, upon their oath aforesaid, do say that the said S. W. on the said thirtieth day of July, in the fortieth year aforesaid, at Chelmsford aforesaid, in the county of Essex aforesaid, before the said L., Lord K., and Sir N. G., the justices aforesaid, so then and there having sufficient and competent power and authority to administer the said oath to the said S. W., in manner and form aforesaid, upon his oath aforesaid, did falsely, wickedly, maliciously, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. [*Second count same as the first, except that it stated another question to be material and different matter sworn to.*]

The like in another form (*a*).

That at the assizes holden for the county of —, on, &c. at, &c. before A. B. esquire, being one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and Sir C. D. kn., “one of the justices of our said lord the king, of his court of Common Pleas, at Westminster,” justices of our said lord the king, assigned to take the assizes in the said county, a certain cause in which G. H. was the plaintiff, and J. K. the defendant, came on to be tried in due form of law, and was then and there tried by a certain jury of the country in that behalf duly sworn and taken between the parties aforesaid, and the jurors aforesaid, now here sworn, upon their oath aforesaid, do further, &c. [*proceed as ante*, 366.]

For perjury in a false affirmation of a Quaker, on a trial at Nisi Prius, of an ac-

That before the day of taking this inquisition, to wit, on, &c. J. C. &c. commissioners, severally appointed to put in execution an act of parliament passed in the eighteenth year of the

(*a*) See 2 Stark. 522, and last precedent; and ante, 302 to 313.

reign of our lord the now king, intituled, &c. [*set forth the title of the act,*] duly issued a certain precept under their hands and seals, directed to R. P. esquire, and R. C. esquire, sheriff of the county of Middlesex or his deputy, and did thereby by virtue of the power and authority vested in them by the said act for that purpose, command and require him the said sheriff to impanel, summon, and return a competent number of substantial or disinterested people of his county, qualified to serve on juries, not less than twenty-four or more than forty-eight, to come and appear before the said commissioners in or by the said act authorized or appointed as aforesaid, on Thursday, the tenth day of September then next ensuing, at nine o'clock in the forenoon, in the committee-room of Whitechapel warehouse in Whitechapel Road, in the parish, &c. in the county, &c. so that out of such persons so impanelled, summoned, and returned, a jury should be drawn in order to assess the value of such of the several houses, shops, warehouses, or parts thereof, lands, grounds, tenements, and hereditaments, situate in or near the said avenue, called Dirty Lane, as the said commissioners should have occasion to purchase and take down for the purposes of the said act, as also the damage that would be sustained thereby, and of the proportionable value of the respective acts, and interest claimed therein, as would be made appear to the said jury at the time and place aforesaid. And the jurors, &c. do further present, that the said precept was afterwards, and before the day of taking this inquisition, to wit, on, &c. duly executed, and that at and upon the execution thereof, as well the value of certain premises, to wit, a messuage and a piece of land, with the appurtenances, situate in the said avenue, called Dirty Lane, in the parish and county aforesaid, whereto and whereof, M. M. of, &c. baker, claimed title and was possessed, and which the said commissioners for putting into execution the aforesaid act of parliament, were about to purchase, for the purposes in the said act mentioned, as the damage that would be sustained thereby, was assessed by the said jurors of a cer-

tion concerning certain houses and lands, respecting which commissioners had been appointed under an act of parliament to pull them down, and defendant had affirmed before a jury returned to assess the value, &c. pursuant to the act that the premises were his freehold, and he had bought them, which he had denied on the trial, and falsely affirmed to the contrary (a).

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(a) See 4 Wentw. 266. By 8 Geo. 1. c. 6, if any person making such affirmation or declaration as is appointed by that act, shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which, if

sworn in the common or usual form, would have amounted to wilful and corrupt perjury; every person so offending shall incur the same pains, penalties, and forfeitures as are inflicted on persons convicted of wilful and corrupt perjury.

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tain jury, there drawn under and by virtue of and for the purposes in the aforesaid precept mentioned; and that upon the execution of the said precept, the said M. M. was produced as a witness, touching and concerning the aforesaid messuage and land with the appurtenances, and of and concerning his title thereto; and the said M. M. (being one of the people called Quakers), was then and there, at and upon the execution of the said precept, examined upon his solemn affirmation or declaration, by and before the said sheriff of the said county of M. touching and concerning the said messuage and land, with the appurtenances, and his title thereto. And the said now jurors, &c. do further present, that after the execution of the said precept, and before the day of taking this inquisition, to wit, on, &c. the said commissioners for putting in execution the aforesaid act of parliament, did, by J. N., &c. there by them then and there lawfully appointed, proceed to and did take down a part of the aforesaid messuage, for the purposes in the said act of parliament mentioned. And the said now jurors, &c. do further present, that afterwards, and before the taking of this inquisition, to wit, in Michaelmas term, in the twentieth year of the reign of our lord the now king, one E. B. claiming title to and alleging himself to be seised in his demesne, as of fee, of and in the said messuage, with the appurtenances impleaded, the said J. N. &c. in the court of our said lord the now king, before Sir W. D. G. knight, and his brethren, then his majesty's justices of the bench, at W. in the said county of M. in a certain plea of trespass on the case, to the damage of the said E. B. of £400, of and for the identical taking down the said part of the aforesaid messuage, and for the damage done on that occasion. And the said jurors, &c. do further present, that issue was afterwards, to wit, in Hilary term, in the twentieth year aforesaid, duly joined in the said plea between the said E. B. and the said J. N., and that the said issue, afterwards, and before the taking this inquisition, to wit, on, &c. duly came on to be tried, and was tried before Sir G. N. knight, then being one of the justices of the said court of our said lord the now king, of the bench, at W. aforesaid, in the said county of M. in the great hall of pleas there, called Westminster-hall, according to the form of the statute in such case made and provided, by a jury of the county then and there sworn and charged to try the said issue, and that upon the said trial of the issue aforesaid, to wit, on the said, &c. at W. aforesaid, the said M. M. was produced before the said Sir G. N. knight, as a witness on the

Affirmation of
defendant as a
Quaker.

part and behalf of the said E. B. and the said M. M. so being one of the people called Quakers as aforesaid, was then and there, upon the said trial of the said issue affirmed, according to the form of the statute in such case made and provided, before the said Sir G. N. knight, and upon such affirmation or declaration, the said M. M. so being one of the people called Quakers as aforesaid, did solemnly, sincerely, and truly declare and affirm, that the evidence he should then give to the court then and there, and the jury so sworn as aforesaid, touching the matter then in question, should be the truth, the whole truth, and nothing but the truth; (the said Sir J. N. knight, then and there having full power and authority to administer the said affirmation or declaration to the said M. M. in that behalf.) And the jurors, &c. do further present, that upon the said trial, certain questions then and there arose, and then and there became and were material, of and concerning the testimony and evidence which the said M. M. gave before the said sheriff of the county of M.; and the jurors of the jury so sworn and impannelled as aforesaid, to the tenor, purport, and effect following, to wit, whether the said M. M. did not before the jury who assessed as well the value of the aforesaid messuage and land with the appurtenances, as the damage which would be sustained in taking down the aforesaid part thereof, say that the aforesaid messuage and land with the appurtenances were his freehold? and whether the said M. M. did not, upon the execution of the aforesaid precept, tell the said jury so thereon drawn as aforesaid, that he had bought the freehold of the said messuage and land with the appurtenances? And the jurors, &c. do further present, that the said M. M. being one of the people called Quakers, and having been so affirmed and declared as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving and wickedly intending not only to elude but to subvert the laws and public justice of this kingdom, and wrongfully and unjustly to hurt, prejudice, and injure the said J. N. &c. the defendants in the said issue, and wrongfully and unjustly to cause a verdict to pass and be given against them therein and to avert truth itself; he the said M. M. then and there, to wit, on the said, &c. at, &c. aforesaid, at the said trial of the said issue by his own act and consent, and upon his said affirmation before the said Sir G. N. knt. (he the said Sir G. N. knt. then and there having such full power and authority to administer the said affirmation or declaration to the said M. M. so being one of the

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people called Quakers as aforesaid,) did wilfully, falsely, and corruptly affirm and declare, (amongst other things) to the jurors of the said jury then and there sworn and charged to try the said issue between the parties aforesaid, that he (meaning the said M. M.) never said that the house (meaning the said messuage hereinbefore particularly mentioned and described) was his freehold, that he (meaning the said M. M.) did not tell the jury (meaning the said jury so drawn under and by virtue of the said precept as aforesaid,) that he had bought the freehold, (meaning the freehold of the said messuage) and upon the said M. M. being again interrogated upon the trial of the said issue, whether he had not, at and upon the execution of the aforesaid precept, told the said jury so thereon drawn as aforesaid, that he had bought the freehold of the said messuage with the appurtenances, he the said M. M. then and there, to wit, on the said, &c. at, &c. aforesaid, on the said trial and on his affirmation and declaration aforesaid, did wilfully, falsely, and corruptly affirm and declare that he (meaning the said M. M.) never told them (meaning the said jury lastly mentioned) so, (meaning that he had bought the freehold of the said messuage) and that he (meaning the said M. M.) told the said jury lastly mentioned, that the conveyances (meaning conveyances to pass to and vest in him the said M. M. the freehold of and in the said messuage with the appurtenances) could not be made to him, (meaning the said M. M. because there was not enough sold to pay off the mortgage, whereas in truth and in fact, the said M. M. did say that the house, that is to say, the said messuage hereinbefore particularly mentioned and described was his freehold; and whereas in truth and in fact, the said M. M. did upon the execution of the aforesaid precept, that is to say, on, &c. affirm, declare, and say unto and before the jurors of the said jury, who assessed as well the value of the aforesaid messuage and land with the appurtenances, as the damages which would be sustained by the taking down the aforesaid part of the said messuage, that the aforesaid messuage was his freehold; and whereas in truth and in fact, the said M. M. did tell the jury, to wit, the jurors of the said jury drawn upon the execution of the said precept as aforesaid, that he had bought the freehold, that is to say, the freehold of the said messuage with the appurtenances, and whereas in truth and in fact, the said M. M. upon the execution of the aforesaid precept as aforesaid, did affirm, declare, and say unto the jurors of the said jury last mentioned, that he the said M. M. had bought the freehold of

the said messuage with the appurtenances; and whereas in truth and in fact, the said M. M. did not, upon the execution of the said precept aforesaid, tell the jurors of the said jury thereon drawn as aforesaid, that the conveyances (meaning the conveyances for the purpose aforesaid) could not be made to him, because there was not enough sold to pay off the mortgage, and whereas in truth and in fact, the said M. M. did not, upon the execution of the aforesaid precept, affirm, declare, or give in evidence, that the conveyance of the said messuage and land with the appurtenances could not be made to him, because there was not enough sold to pay off the mortgage, nor did he the said M. M. on the execution of the said precept, affirm, declare or give in evidence to that or the like effect. And so the said now jurors for our said lord the now king, upon their oath aforesaid, say that the said M. M. so being one of the people called Quakers as aforesaid, on the said, &c. at, &c. aforesaid, before the said Sir G. N. knight (he the said Sir G. N. knight, then and there as aforesaid, having full power and authority to administer the said affirmation or declaration in that behalf,) by, of, and through the said M. M. his own act and consent upon his aforesaid affirmation and declaration, did wilfully, falsely, and corruptly affirm and declare, to the great displeasure of Almighty God, in contempt of the laws of this realm, to the evil and wicked example of all others, to the subversion of the public justice and good government of this kingdom, and against the peace of our lord the now king, his crown and dignity. And the said now jurors, &c. do further present, that before the taking of this inquisition, to wit, on, &c. a certain issue wherein E. B. was plaintiff, and J. N., &c. defendants, in a certain plea, to wit, a plea of trespass on the case came on to be tried, and was to be tried before Sir G. N. knight, then being one of the justices of the court of our said lord the king of the bench at W. in the county of M. aforesaid, in the great hall of pleas there, called Westminster-hall, according to the form of the statute in such case made and provided, by a jury of the country then and there sworn and charged to try the said issue, and that upon the trial of the said last-mentioned issue, the said M. M. was produced before the said chief^(a) justice, as a witness on the part and behalf of the said E. B.

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Second count more general, not stating the former proceeding so fully, but commencing with the trial of the issue when the perjury was committed.

(a) The word "chief" was held surplusage, 4 Wentw. 170.

and the said M. M. being one of the people called Quakers, was then and there, to wit, on the said, &c. at, &c. aforesaid, affirmed according to the form of the statute in such case made and provided, before the said Sir G. N. knight, and upon such affirmation or declaration, the said M. M. as being one of the people called Quakers as aforesaid, did solemnly, sincerely, and truly declare and affirm, that the evidence he should give to the court then and there, and the said jury so sworn and charged to try the said issue as aforesaid touching the matter then in question, should be the truth, the whole truth, and nothing but the truth, (the said Sir G. N. knight, then and there having full power and authority to administer the said affirmation or declaration to the said M. M. in that behalf.) And the said now jurors, &c. do further present, that upon the trial of the said issue, certain questions then and there arose and became and were material to the matters in issue of and concerning a certain house, with the appurtenances, whereof a great part had been thentofore taken down, under and by virtue of, and for the purposes specified in a certain act of parliament made in the eighteenth year of the reign of our said lord the king, entitled, "An act for, &c." [*set forth the title of the act*] and of and concerning the title to the said house, and in whom the same was vested, and also of and concerning certain testimony which the said M. M. had theretofore given of and concerning the aforesaid house with the appurtenances, to and before a certain jury, who assessed as well the value of the said house with the appurtenances, as the damage which would be sustained by taking down such part thereof as aforesaid, according to the tenor and effect, and by virtue of the aforesaid act of parliament; and that the said M. M. was then and there upon the said trial of the aforesaid issue interrogated and asked, whether he the said M. M. did not, before the said last-mentioned jury, say that the house was his freehold? and whether he the said M. M. did not tell the jurors of the said jury lastly mentioned, that he had bought the freehold of the said house? And the said now jurors, &c. do further present, that the said M. M. being one of the people called Quakers as aforesaid, so being and having so affirmed as aforesaid, not having, &c. but being moved and seduced, &c. he the said M. M. then and there, to wit, on the said, &c. at, &c. aforesaid, at the trial of the said issue by his own act and consent, and upon his said affirmation or declaration before the said Sir G. N. knight (he the said Sir G. N. knight, then and there having such full

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power and authority to administer the said affirmation or declaration to the said M. M., so being one of the people called Quakers as aforesaid,) did wilfully, falsely, and corruptly affirm and declare (amongst other things) to the jurors of the said jury so sworn and charged to try the said issue as aforesaid, that he, &c. [*as in the first count to the end.*]

FOR PERJURY AFTER VERDICT OR JUDGMENT.

That before the making of the affidavit hereinafter mentioned, the goods and chattels of one J.B. had been levied and taken by the sheriff of the county of K. upon and by virtue of a certain writ of our said lord the king, called a *feri facias*, before then sued and prosecuted out of the court of our said lord the king of the Bench at W. in the county of M. upon a certain judgment before then obtained in the said court in a certain action at the suit of F.R. against him the said J. B., and thereupon afterwards, on, &c. in Hilary Term, in the forty-fifth year of the reign of our said lord the king, at, &c. by a certain rule or order of the said court of the bench, at, &c. aforesaid, then and there duly made, it was ordered that the said F. R. upon notice of the said rule to be given to his attorney or agent, should show cause to the said court on Wednesday then next, why the judgment signed in the said cause, and the proceedings had thereon should not be set aside, and that the sheriff of the said county of K. should retain in his hands the money levied by him under the said writ of execution issued in the said cause until the further order of the said court. And the jurors, &c. do further present, that B. B. late of, &c. gentleman, attorney for the said F. R. the plaintiff in the said action, contriving and wickedly and maliciously intending to aggrieve and injure the said J. B. and to prevent him from obtaining a rule of the said court of our said lord the king of the bench aforesaid, in the said cause, for the setting aside the said judgment, and to discharge the said rule so obtained as aforesaid, and to impede and stop the course of public justice, heretofore, to wit, on, &c. contriving and intending as aforesaid, did come in his the said

For perjury in affidavit sworn in open court in opposition to a rule to show cause why a regular judgment should not be set aside on an affidavit of merits (a).

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(a) See notes, ante, 302 to 318.

B. B.'s own proper person into the said court of our said lord the king of the bench aforesaid, at, &c. aforesaid, and did then and there produce to the said court a certain affidavit in writing of him the said B. B. to be exhibited to the said court for the purpose of discharging the said rule so made and obtained as aforesaid, which said affidavit was and is intituled "In the Common Pleas," between F. R. plaintiff (meaning the said F. R.) and J. B. the defendant (meaning the said J. B.) and the said B. was then and there before the same court duly sworn, and did take his corporal oath upon the Holy Gospel of God, concerning the truth of the matters contained in the said affidavit (the same court having a lawful and competent authority to administer the said oath to the said B. B. and to take and receive the said affidavit of him the said B. B. in that behalf), and that the said B. B. being so sworn as aforesaid, not having, &c. but being moved and seduced, &c. and having no regard to the laws and statutes of this realm, did then and there, to wit, on, &c. at Westminster aforesaid, in the county aforesaid, in and by his affidavit aforesaid, and by his oath aforesaid, before the said court, the said court then and there having such authority to administer the said oath as aforesaid, and to take and receive the said affidavit as aforesaid, falsely, corruptly, knowingly, wilfully, and maliciously did depose and swear as follows, that is to say, B. B. of Clement's Inn, Middlesex, gentleman, attorney for the above-named plaintiff (meaning himself the said B. B.) maketh oath and saith, that the defendant (meaning the said J. B.) was served with a copy of the *capias ad respondendum* on the 6th day of December last, returnable in eight days of St. Hilary, viz. 20th of January, that on the 21st of January last, this deponent (again meaning himself the said B. B.) filed the declaration in this cause (meaning the said cause between the said F. R. and the said J. B. and this deponent (again meaning himself the said B. B.) did cause the defendant (again meaning the said J. B.) to be duly served with notice thereof; and this deponent (again meaning himself the said B. B.) further saith, that a plea (meaning a plea in the said action) was demanded on the 25th of January, which expired on the 26th of January, and this deponent (again meaning himself the said B. B.) saith, that on the 30th day of January, in the afternoon, this deponent (again meaning himself the said B. B.) signed judgment (meaning judgment in the said action) for want of a plea, and issued out a *fieri facias*, returnable on the Morrow of the Purification,

and that after this deponent (again meaning himself the said B. B.) had so signed judgment as aforesaid, and issued execution, the defendant's agent's clerk called on this deponent (again meaning himself the said B. B.) to get this deponent (again meaning himself the said B. B.) to consent to a summons for time to plead, returnable at six o'clock in the evening of the 31st of January, which this deponent (again meaning himself the said B. B.) refused to do, and informed him (meaning the said clerk) he had so signed judgment, and issued his execution; and this deponent (again meaning himself the said B. B.) saith, that all his proceedings in this cause (again meaning the said cause between the said F. R. and J. B.) were and are regular, and according to the established practice of this honorable court (meaning the said court of our said lord the king of the bench aforesaid); and this deponent (again meaning himself the said B. B.) lastly saith, that he (again meaning himself the said B. B.) accompanied the officer (meaning an officer of the sheriff of Kent, who had before then levied the said debt, under and by virtue of the said writ); and the said defendant (again meaning the said J. B.) there (meaning at the house of the said J. B.) at the time when he the said B. B. was there with the said last-mentioned officer admitted that he (again meaning the said J. B.) was guilty of all the counts in the declaration, (meaning the said declaration in the said cause) except that of keeping a setting dog, or to that effect, and further informed this deponent (again meaning himself the said B. B.) that being conscious thereof (meaning the said offences) he (again meaning him the said J. B.) had given his attorney (meaning the attorney of the said J. B.) directions to settle the action (meaning the said action) without delay, and which he (again meaning the said J. B.) imagining he (again meaning the said attorney of the said J. B.) had done and expressed himself (again meaning the said J. B.) much surprised and dissatisfied at finding from this deponent, that his attorney (again meaning the said attorney of the said J. B.) had made no overtures or offers of compromise, adding that he (again meaning the said J. B.) had no intention of defending the said action, or to that effect. Whereas in truth and in fact the said J. B. did not admit at his said house when the said B. B. was there with the said last-mentioned officer of the sheriff of Kent, or at any other time, that he was guilty of all the counts in the declaration aforesaid (except that of keeping a setting dog) or to that effect, in manner and form, as the said B. B. so deposed

and swore as aforesaid: and whereas in truth and in fact the said J. B. did not at his said house, and when the said B. B. was there with the said last-mentioned officer of the sheriff of K. or at any other time, or in any other place, inform the said B. B. that he had given his the said J. B.'s attorney directions to settle the action without delay, nor did he the said J. B. then and there inform the said B. B. that he the said J. B. had done it in manner and form as the said B. B. so deposed and swore as aforesaid: and whereas in truth and in fact he the said J. B. did not at his said house, and when the said B. B. was there with the said officer of the sheriff of K., express himself much surprised and dissatisfied at finding from the said B. B. that his the said J. B.'s attorney had made no overtures or offers of compromise: and whereas in truth and in fact he the said J. B. did not then and there add, that he had no intention of defending the said action, or to that effect, in manner and form as the said B. B. so deposed and swore as aforesaid. And so the jurors aforesaid upon their oath aforesaid, do say that the said B. B. on the said, &c. at Westminster aforesaid, in the county aforesaid, before the said court of our said lord the king of the bench aforesaid, the said court having such power and authority as aforesaid, by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown, and dignity.

For perjury in an affidavit before a judge of K. B. at chambers, to obtain a rule to set aside a judgment, writ of execution, and to be discharged out of custody (a).

London. That before the making of the affidavit hereafter mentioned, to wit, in Michaelmas term, in the twenty-ninth year of the reign of, &c. a certain judgment had been, and was, signed in the court of our said lord the now king, before the king himself (the said court then and still being holden at W. in the county of M.), in a certain cause, wherein T. C. was plaintiff, and W. D. was defendant, whereby it was considered that the said T. C. did recover against the said W. D. as well a certain debt of two thousand and forty pounds, as also eighty-three shillings, which in and by the said court were adjudged to the said T. C. for his damages, which he had sustained as

(a) See form, 4 Wentw. 281; see notes, ante, 302 to 318.

well by reason of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said W. D. was convicted, as by the record and proceedings thereof still remaining in the said court of our said lord the king, before the king himself at W. aforesaid, more fully appears, and which said judgment had been and was so signed upon and by virtue of a certain bond and warrant of attorney, before then made and given by the said W. D. to the said T. C., and that after the signing of such judgment, and before the making of the affidavit hereafter mentioned, the said W. D. had been and was taken and arrested by the sheriff of the county of M. under and by virtue of a certain writ of our said lord the king, commonly called a *capias ad satisfaciendum*, before then issued out of the said court of our said lord the king, before the king himself at W. aforesaid, upon the said judgment, directed to the said sheriff, and returnable in the same court on Friday next after eight days of St. Hilary, in Hilary term, now last past, to wit, at L. aforesaid, in the parish of St. D. in the West, in the ward of F. Without. And the jurors, &c. do further present, that the said W. D. late of, &c. contriving and wickedly and maliciously intending to aggrieve and injure the said T. C., and to deprive him of the means of recovering the debt and damages aforesaid, heretofore, to wit, on, &c. at, &c. aforesaid, in order to obtain a rule of the said court of our said lord the king before the king himself, whereby it might be ordered by the said court that the said T. C. should shew cause why the judgment signed in the said cause, and the writ of *capias ad satisfaciendum* issued and executed thereon, by the sheriff of the county of M. as aforesaid, should not be set aside, and why the said W. D. should not be discharged out of the custody of the marshal of the Marshalsea of the said court of our said lord the king, before the king himself, as to the action aforesaid, did come in his the said W. D.'s proper person, before Sir N. G. knight, then one of the justices of the said court of our said lord the king, before the king himself, and did then and there produce to and before the said Sir N. G. so being such justice as aforesaid, a certain affidavit in writing, of him the said W. D. and the said W. D. then and there, before the said Sir N. G. so being such justice as aforesaid, was duly sworn, and did take his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit (he the said Sir N. G. then and there having

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Second count
more general.

sufficient and competent power and authority to administer the same oath to the said W. D. and to take and receive the said affidavit of him the said W. D.) And that the said W. D. being so sworn as aforesaid, not having, &c. but being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there, to wit, on the said, &c. at, &c. aforesaid, and by his said affidavit aforesaid, upon his oath aforesaid, before the said Sir N. G. so being such justice, and having such power and authority as aforesaid, maliciously depose and swear, amongst other things, as follows, that is to say, and this deponent (meaning the said W. D.) saith, &c. [*state the matter sworn,*] as by the said affidavit in writing, of the said W. D. afterwards exhibited to the said court of our lord the king, before the king himself, for the purpose aforesaid, and now there remaining, more fully appears; whereas in truth and in fact, the said T. C. did not, &c. [*here assign the perjury according to the facts.*] And so, &c. [*usual conclusion, when affidavit sworn before a judge, as ante, 320.*] And the jurors, &c. do further present, that the said W. D. in order to obtain a rule of the said court of our said lord the king, before the king himself, at W. aforesaid, whereby it might be ordered, that the said T. C. should show cause why a certain judgment before then obtained in a certain action in the same court, by the said T. C. against the said W. D. and a certain writ of *capias ad satisfaciendum*, issued and executed thereon by the sheriff of the county of M. should not be set aside, and why the said W. D. should not be discharged out of the custody of the marshal of the Marshalsea of the same court, as to the said action, on, &c. at, &c. aforesaid, came in his own proper person before Sir N. G. knight, then being one of the justices of the said court of our said lord the king, before the king himself at W. aforesaid, and did then and there produce, &c. [*state the swearing the affidavit, &c. as in first count, and allege that he swore,*] in substance and effect as follows, that the said T. C. had caused a certain judgment to be entered on a certain bond, and warrant of attorney, before then given and executed by the said W. D. to the said T. C. in one of his majesty's courts of record in Ireland, and was actually proceeding to enforce the payment of the money for which the same was given, notwithstanding such bond and warrant of attorney were given to the said T. C. merely as a security to guarantee him for any sum of money that should

appear to be due from the said W. D. to the said T. C. on a just and fair settlement of accounts between them the said W. D. and T. C., and that the said W. D. had filed a bill in his majesty's high court of Chancery in Ireland, respecting several supposed demands made by the said W. D. to the said T. C. and particularly the said bond and judgment obtained thereon in Ireland, and praying for an injunction to prevent the said T. C.'s proceeding at law against the said W. D. until such time as the said account should be taken and settled, and that one of the masters of the court of Chancery in Ireland, had reported to the lord high chancellor of Ireland, the answer put in by the said T. C. to be evasive and insufficient, and that on such report, the said lord chancellor quashed an injunction against the said T. C.'s proceeding at law, according to the prayer of the said bill. And the jurors, &c. do further present, that the several matters and things so deposed to try the said W. D. were material, in order to induce the said court of our said lord the king at W. aforesaid, to grant the said rule, whereas in truth and in fact the said T. C. did not at any time cause judgment to be entered on such bond, &c. [*here assign the perjury, and proceed as in the first count.*]

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That before the making of the affidavit hereafter mentioned, the sum of £10 had been levied and taken by the sheriff of the county of W. upon and by virtue of a certain writ of our said lord the king of *testatum fieri facias*, before then sued and prosecuted out of the court of our said lord the king, before the king himself, (the said court then and still being holden at W. in the county of M.) upon a certain judgment before then obtained in the same court, in a certain action at the suit of the said M. D. against the said W. M. and which said writ was directed to the sheriff of W. by which said writ our said lord the king had commanded the said sheriff that [*here recite the writ of testatum fieri facias.*] And the jurors, &c. do further present, that the said W. M. late of, &c. contriving, and wickedly and maliciously intending to aggrieve and injure the said M. D. and to deprive her of the said sum of £10, and also to subject her to the payment of the costs of the application hereinafter mentioned, heretofore, to wit, on, &c. at, &c.

For perjury in an affidavit sworn in open court, in order to obtain a rule to show cause why an execution made by the plaintiff in an action should not be set aside, on the ground of irregularity, in having taken the deponent's goods under a *fi. fa.*, in a different county to that in which the venue was laid (a).

(a) See the precedents, ante, and Mr. Ballantine's MS. precedent, page 65.
374, 7, and the notes, ante, 302 to 318. From Mr. Knapp's

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aforesaid, in order to obtain a rule of the said court of our said lord the king, before the king himself, whereby it might be ordered by the said court, that the said M. D. should show cause why the said sum of £10, so levied and taken by the said sheriff of the county of W. aforesaid, should not be restored to the said W. M. and why the said M. D. or M. S. D. her then attorney, should not pay the costs of that application, to be taxed by the master, did come in his the said W. M.'s proper person, into the said court of our said lord the king, before the king himself, to wit, at, &c. aforesaid, and did then and there produce to the said court a certain affidavit in writing of him the said W. M. to be exhibited to the said court for the purpose aforesaid, which said affidavit was and is intituled, In the King's Bench (meaning the said court of our said lord the king, before the king himself,) between M. D. (meaning the said M. D.) plaintiff, and W. M. gent. (meaning the said W. M.) defendant, and the said W. M. then and there before the same court was duly sworn, and did take his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit, (the same court then and there having a lawful and competent authority to administer the said oath to the said W. M. and to take and receive the said affidavit of him the said W. M. in that behalf.) And that the said W. M. being so sworn as aforesaid, not having, &c. but being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there, to wit, on the said, &c. at, &c. aforesaid, in and by his affidavit aforesaid, upon his oath aforesaid, before the said court, (the said court having such power and authority as aforesaid,) falsely, corruptly, knowingly, wilfully, and maliciously depose and swear as follows, that is to say, W. M. of, &c. (meaning the said W. M.) maketh oath and saith, that about twelve years since, this action, (meaning the said action at the suit of the said M. D.) against the said W. M. was commenced by one S. P. plaintiff, (meaning the said M. D.'s then attorney,) the venue, (meaning the venue in the said action) was laid in M. and he (meaning the said W. M.) confessed judgment for £2. 10s. which was afterwards entered up, and he (meaning the said W. M.) hath since paid money to the said S. P. towards the debt and costs, so that a very trifling sum remained due upon such judgment, as he (meaning the said W. M.) apprehends, notwithstanding which, he (meaning the said W. M.) was, upon the second of November instant,

(meaning the second day of November, in the year aforesaid,) served with an order to change the attorney to one J. D. for plaintiff, (meaning the said M. D.) upon which day a writ of *feri facias* was delivered to the sheriff of W. directing him to levy upon defendant's (meaning the said W. M.'s) goods and effects, for £10, besides sheriff's poundage, and all other incidental expences, retufnable on, &c. which money hath been paid into the hands of the said sheriff. And this deponent (meaning the said W. M.) further saith, that this judgment (meaning the said judgment so obtained by the said M. D. against the said W. M. as aforesaid) hath not been revived by *scire facias*, and is advised that the judgment (meaning the said judgment in the said action) having been signed twelve years ago, and not revived by *scire facias*, and the venue (meaning the venue in the said action) having been laid in M. and the writ upon which this deponent's (meaning the said W. M.'s) goods were taken, having been issued and directed to the sheriff of W. was not a *testatum* (meaning a *testatum feri facias*) he (meaning the said W. M.) conceives, he (meaning the said W. M.) is intituled to have the money so taken restored to him (meaning the said W. M.) as by the said affidavit in writing of the said W. M. afterwards exhibited to the said court of our said lord the king, before the king himself, for the purpose aforesaid, and now there remaining, more fully appears. Whereas in truth and in fact, no writ of *feri facias* was delivered to the sheriff of W. upon the second day of November, in the year of our Lord 1797, directing him to levy upon the said W. M.'s goods and effects as in the said affidavit is mentioned. And whereas in truth and in fact, the writ upon which the said W. M.'s goods were taken, was a *testatum feri facias*. And so, &c. [as ante, 329. 377.]

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That J. M. late of, &c. on, &c. at, &c. in his own proper person, came before T. W. gentleman, then and there being a commissioner, duly appointed to take affidavits in the county of C. in or concerning any cause depending in his majesty's court of Common Pleas at W., and the said J. M. did then and

For perjury in an affidavit sworn before a commissioner to take affidavits in C. P. to increase the costs after trial, swearing that A. B. &c. were material witnesses (a).

(a) Sec 4 Wentw. 246; see the like on statute 5 Eliz. c. 9. post, and the notes, ante, 302 to 318; and *quære*, if there should not be an averment of


the materiality of the matter sworn, as in precedent, post, on 5 Eliz. c. 9. see also ante, 305. 309.

there produce and exhibit before the said T. W., a certain paper-writing purporting in itself to be an affidavit of him the said J. M., and framed and intended to be made and sworn by him the J. M. in the said court of Common Pleas, in a certain cause then and there depending in the said court of Common Pleas, between G. L., on the demise of the honorable C. W. widow, commonly called Lady W. and the honorable M. G. spinster, plaintiffs, and A. U., and four others defendants, which said paper-writing was and is entitled as follows, to wit, Common Pleas, L. on the demise of lady W. and another, meaning the honorable C. W. widow, commonly called lady W., and the said hon. M. G. spinster, and A. U. and others, (meaning four) defendants : and the said J. M. did then and there, before the said T. W., in due manner take his corporal oath, upon the holy gopel of God, as to the truth of the said paper-writing, purporting in itself to be an affidavit of him the said J. M. as aforesaid, and the matters therein mentioned, (he the said T. W. being then and there such commissioner as aforesaid, and then and there having sufficient power and authority to administer the said oath unto the said J. M. in that behalf,) and the said J. M., &c. being of a wicked and corrupt mind, and of a most diabolical temper and disposition, and unlawfully, maliciously, and wickedly contriving, devising, designing, and intending to injure and aggrieve the said honorable C. W. widow, commonly called lady W., and the said honorable M. G. spinster, and to put the said C. W. to great expence and charge ; and not having, &c. but being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the pains and penalties therein contained, then and there, to wit, on, &c. at, &c. aforesaid, before the said

[383] T. W. upon his said oath so taken as aforesaid, falsely, wickedly, wilfully, maliciously, and corruptly, by his own proper act and consent, and of his own most wicked, malicious, and corrupt mind and disposition, did say, depose, swear, and affirm, that the matters in the said paper-writing or affidavit contained, were true ; in which affidavit, to wit, in one part thereof, he, the said deponent, had falsely, wickedly, maliciously, wilfully, and corruptly, by his own proper act and consent, and of his own most wicked and corrupt mind and disposition said, deposed, sworn, and affirmed, in these English words following (a), to wit, that

(a) This mode of introducing the matter sworn is not judicious, ante, 309, 310.

the said cause (meaning the said cause so depending in the said court of Common Pleas as aforesaid), was tried at the last assizes for the county of C. (meaning the assizes held in and for the said county of C. last past, before the making of the said affidavit), and that J. D. (and several others), were all material witnesses for the said defendants (meaning the said A. U., &c.) as this deponent (meaning the J. M.) was advised and believes, and were all subpœnaed, and attending at the said trial (meaning the said trial of the said cause), as witnesses in the cause, (meaning the aforesaid cause), and on no other account; and this deponent (meaning the aforesaid J. M.) saith, that all or most of the said witnesses (meaning the several persons abovenamed, who by the said affidavit are so mentioned to have been subpœnaed), lived upwards of fifteen miles from C. (meaning the city of C. in the county of C.) which made it very difficult for them (meaning the said persons so alleged to have been so subpœnaed), and saith that all the said witnesses (meaning the said several persons so alleged to have been subpœnaed), were necessarily out, in going to, attending at, and returning from, the said last assizes held in and for the said county of C. (meaning the aforesaid last assizes), before the making of the said affidavit, five days; as by the affidavit now remaining filed and upon record in the said court of Common Pleas, relation being thereunto had, more fully and at large appears; whereas, in truth and in fact, the said J. D. in the said affidavit named, was not necessarily out, in going to, attending at, and returning from, the said last assizes, five days; and whereas in truth and in fact, the said J. D. in the said affidavit also named, was not necessarily out, in going to, attending at, and returning from the said last assizes, five days; and whereas in truth and in fact, the said F. F. named in the said affidavit, was not necessarily out, in going to, attending at, and returning from, the said last assizes, five days; and whereas in truth and in fact, &c. (negative distinctly as to each witness), and so, &c. [*conclude as ante*, 320, *at common law.*]



IN COURTS OF EQUITY,—ON SUMMARY PROCEEDINGS.

For perjury in swearing before the Lord Chancellor that defendant had not been home after attending in court on business before he was arrested (a).

[After stating the proceedings of the court of King's Bench, on which an attachment was founded, and that a warrant was directed to one M. L. to apprehend him, whereon he was taken, the indictment proceeds as follows.] And the jurors, &c. do further present, that in Trinity term, in the twenty-fourth year, &c. a certain cause was depending in chancery, in which R. M. and J. his wife, were plaintiffs, and the said E. A. and others, were defendants, and that such proceedings were thereupon had, that afterwards, to wit, on, &c. at Lincoln's Inn, in the county of Middlesex, in a certain hall there, called Lincoln's Inn Hall, the said cause came on to be heard before Edward Lord Thurlow, then being lord high chancellor of Great Britain, and that the said cause was then and there heard before the said Lord Thurlow. And the jurors, &c. do further present, that the said E. A. then being one of the solicitors of the said high court of chancery, on, &c. aforesaid, at, &c. aforesaid, attended the hearing of the said cause as solicitor for himself, and one of the said defendants in the said cause; and that after the hearing of the said cause, and before the return of the said writ, to wit, on the said, &c. the said M. L. by virtue of the writ and warrant aforesaid, at the parish of St. Martin in the Fields, in the county aforesaid, did duly take and arrest the said E. A. and had and detained the said E. A. in custody, by virtue of the writ and warrant aforesaid, and that after the said E. A. was so in the custody of the said M. L. to wit, on the said, &c. a certain complaint was made for and on the behalf of the said E. A. to the said Lord T. then being in the said court of chancery, then held in Lincoln's Inn Hall aforesaid, that he, the said E. A. was so taken by the said M. L. on his, the said E. A.'s way from the said hall, called Lincoln's Inn Hall, after the said cause was heard as aforesaid, to his, the said E. A.'s own house, situate in the parish of St. Martin in the Fields aforesaid, in the said county of Middlesex. And that, afterwards, to wit, on the

(a) See 1 T. R. 63, several objections were taken to this indictment, but they were all over-ruled by the court, see

1 T. R. 63, and subsequent notes, see notes, ante, 302 to 318.

said, &c. the said E. A. did appear in his proper person before the said Lord T. then being in the said court of chancery then held at Lincoln's Inn Hall, in, &c. aforesaid, in the custody of the said M. L. to be examined touching the said complaint then and there to be heard. And the jurors, &c. do further present, that it then and there became and was a material question on the hearing of the said complaint before the said Lord T., whether the said E. A. was taken and arrested by the said M. L. as aforesaid, on his the said E. A.'s way from Lincoln's Inn Hall aforesaid, after the said cause was heard as aforesaid, to his the said E. A.'s own house, situate in the Haymarket, in the parish of, &c. in the county aforesaid. And the jurors, &c. do further present, that the said E. A., at and upon the hearing of the said complaint (*a*), to wit, on, &c. at Lincoln's Inn aforesaid, in the county aforesaid, in Lincoln's Inn Hall, in the court of chancery, then and there held before the said Lord T., was duly sworn and took his corporal oath, to speak the truth of and concerning the said complaint, (he the said Lord T. then and there having competent and sufficient power and authority to administer an oath to the said E. A. in that behalf; and that the said E. A., being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and contriving, designing, and intending to cause and procure himself the said E. A. to be discharged from and out of the custody of the said M. L., on the said, &c. in Lincoln's Inn Hall aforesaid, in Lincoln's Inn aforesaid, in the county aforesaid, at and upon the said hearing of the said complaint, upon his oath aforesaid, before the said Lord T., so then and there having sufficient and competent power and authority to hear the said complaint, and to administer an oath to the said E. A. on that behalf as aforesaid, falsely did say, depose, and swear, of and concerning the said complaint, to the effect following, to wit, that he the said E. A. had not been at home after attending the cause, (meaning that on the said, &c. he the said E. A. had not been at his said house, situate in the Haymarket aforesaid, in the said parish of, &c. (*b*), after attending the hearing of the said cause in the said court, before he the said E. A. was arrested and taken, and

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(*a*) This is a sufficient allegation that the complaint was heard, coupled with "at and upon the hearing of the said complaint," &c. 1 T. R. 70.

(*b*) This innuendo is not vi-

cious, though the house was before described as merely in St. Martin in the Fields, for the same house is intended, 1 T. R. 70.

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by the said M. L. aforesaid,) and that he the said E. A. was arrested upon the steps of his own door, on his way home from attending the court in the said cause, and before he had been within the door of his house, (meaning that on the said, &c. he the said E. A. was arrested and taken by the said M. L. as aforesaid, upon the steps of the outer door (a) of the said house, of him the said E. A., on his the said E. A.'s way home to his said house, from attending the said court, on the said hearing of the said cause in the said court, and before he the said E. A. had been within the said door of his said house;) whereas in truth and in fact, on the said, &c. he the said E. A. had been at his said house after attending the hearing of the said cause, in the said court, before he the said E. A. was so arrested and taken by the said M. L. aforesaid; and whereas, in truth and in fact, on the said, &c. he the said E. A. was not arrested and taken by the said M. L. as aforesaid, upon the steps of the said outer door of the said house of the said E. A., on his the said E. A.'s way home to his said house, from attending the said court on the hearing of the said cause, and before he the said E. A. had been within the said door of his said house. And so, &c. the jurors aforesaid, upon their oath aforesaid, do say, that the said E. A., on the said, &c. in Lincoln's Inn Hall aforesaid, at and upon the said hearing of the said complaint, upon his oath aforesaid, before, &c. in manner and form aforesaid, did commit wilful and corrupt perjury, &c.

For perjury in answer sworn before a master in chancery (b).

Middlesex. That T. G. late of, &c. heretofore, to wit, on, &c. at, &c. did exhibit his certain English bill of complaint

(a) This is not improper, though there was no occasion for the innuendo, for the outer door must be intended; the inner one would not entitle him to his privilege, 1 T. R. 70.

(b) This indictment was settled in A. D. 1805, by a very eminent crown lawyer at the bar, upon an examination of precedents, see notes, ante, 302 to 318; see other precedents, Cro. C. C. 8th ed. 342, and same precedent, 2 Stark.

524. The indictment against Albany Wallis, A. D. 1800, in Middlesex, which was settled with great care, was in the same form. The defendant was acquitted on the merits. So much only of the statement in the bill and the prayer thereof is to be stated, as may be necessary to explain the parts and materiality of the defendant's answer, by innuendoes referring thereto, ante, 306 to 312.

in writing, against J. B. therein described, of, &c. in the high court of Chancery of our said lord the king, (the same court then being held at W., in the said county of M.) which said bill was directed to the right honorable John Lord E. baron of E. in the county palatine of Durham, high chancellor of Great Britain; and the said T. G. in and by his said bill of complaint, amongst other things, stated and alleged in substance and to the effect following, (that is to say,) that the said J. B. having shortly before, or in the month of October, 1802, procured a lease to be granted to him of a certain messuage or tenement used as a public house, and called or known by the name or sign of the Red Lettuce, situate in Frogwell Court aforesaid, and of three tenements thereto adjoining, for the term of fourteen years from, &c. ——— and the said premises being very much out of repair, and the said J. B. being unable to defray the expence of repairing the same, he applied to the said T. G. to become concerned with him in such purchase, upon the said T. G. paying to him the sum 38*l.* 17*s.* 3*d.* being a moiety or half-part of the sum which had been paid by him as a premium or consideration for such lease; and also paying 3*l.* 10*s.* being half of the sum of 7*l.* alleged to have been paid by him on account of the said premises. And the said T. G., after some consideration, at length agreed to become jointly concerned with him in such purchase; and accordingly the said J. B. and the said T. G. signed a certain instrument in writing, bearing date on or about, &c. and made between him the said J. B. of the one part, and the said T. G. of the other part; and thereby the said J. B. in consideration of 38*l.* 17*s.* 3*d.* to him paid by the said T. G., did thereby agree to let unto the said T. G. one moiety of the said public house, known by the name of the Red Lettuce, situate, &c. and also one moiety of all those three tenements adjoining to the said public house, known by the respective numbers of 3, 4, 5, 6, and 9, together with all the fixtures and appurtenances thereto belonging, to hold unto the said T. G. his executors or administrators from the date thereof, for all the remainder of the term of fourteen years, which the said J. B. then had therein, and with full and free liberty and permission for the said T. G. his executors and administrators, to receive and take the moiety of all the rents, issue, and profits of the said premises during the said term; and the said T. G. did thereby agree to take the said moiety of the said premises upon the terms aforesaid, and for which he had accordingly paid the

Reference to the bill filed (a).

Swearing of defendant before master in chancery as to truth of an answer.

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The matter falsely sworn to.

said sum of 38*l.* 17*s.* 3*d.* to the said J. B. as the purchase money, and it was thereby mutually agreed, that all the necessary repairs of the said public house, tenements, and premises should be paid by the said J. B. and the said T. G. in equal proportions, and the said T. G. did also in and by his said bill of complaint, amongst other things, pray that the said J. B. might answer and set forth, whether he the said J. B. and the said T. G. did not execute or sign an agreement of such or the like date, purport, or effect as aforesaid, or of what other date, purport, or effect, as in and by the said bill of complaint of the said T. G. remaining filed of record in the said court of chancery, amongst other things, will more fully appear. And the jurors, &c. do further present, that the said J. B. the defendant in the said bill of complaint afterwards, that is to say, on, &c. at the parish of St. Andrew, Holborn, in the county of Middlesex, did come in his own proper person before A. P. esq. then and there being one of the masters of the said Court of Chancery, and then and there did produce and exhibit to the said A. P. the answer in writing of him the said J. B. to the said bill of complaint of him the said T. G. entitled, "The answer of J. B. the defendant to the bill of complaint of T. G. complainant," (b) and the said J. B. was then and there in due manner sworn, and did take his corporal oath upon the holy gospel of God, touching and concerning the matters contained in his said answer before the said A. P., he the said A. P. so then being one of the masters of the Court of Chancery as aforesaid, and then and there having sufficient and competent power and authority to administer an oath to the said J. B. in that behalf,* and that the said J. B. being so sworn as aforesaid, did upon his corporal oath concerning the matters contained in the said answer before the said A. P. esq. then as aforesaid, being one of the said masters of the said Court of Chancery, then and there swear, that so much of the said answer of him the said J. B. so as aforesaid, exhibited and produced as related to his own acts and deeds was true, and that the said J. B. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and minding and intending

(a) The words "filed of record" were not in the indictment against Albany Wallis; as to the reference to the proceeding, see ante, 311. 7 T. R. 315.

(b) In the indictment against Albany Wallis, the title of the answer was not stated, see also 306, 307.

unjustly to aggrieve the said T. G. complainant as aforesaid, in his answer aforesaid before the said A. P. esq. then and there being one of the said masters of the said Court of Chancery as aforesaid, and having such sufficient and competent authority as aforesaid, falsely, knowingly, wilfully, wickedly, maliciously, and corruptly by his own act and consent upon his oath aforesaid, did answer, swear, and affirm, (amongst other things) in substance as follows, (that is to say), and this defendant (meaning himself the said J. B.) says, that the wife of the said complainant (meaning the wife of the said J. B.) used to manage the said public-house, whilst this defendant (meaning himself the said J. B.) was repairing the other houses of the said complainant, (again meaning the said T. G. and his wife) received for liquor and beer sold in the said public-house the sum of £25 and upwards, as this defendant (again meaning himself the said J. B.) verily believes, and have not accounted for or paid the same, or any part thereof to this defendant; (again meaning himself the said J. B.) but the said defendant, (again meaning himself the said J. B.) says, that on or about the 27th day of the said month of October, the said complainant's wife (again meaning the wife of the said T. G.) wrote out a paper which she (again meaning the wife of the said T. G.) asked this defendant (again meaning himself the said J. B.) to sign, and which defendant (again meaning himself the said J. B.) did, by making his (meaning the said J. B.'s) mark thereto, but when this defendant (again meaning himself the said J. B.) signed the same, (meaning the said paper) he (meaning himself the said J. B.) was unacquainted with the contents thereof, this defendant (meaning himself the said J. B.) being unable to read the same, nor having been perused by any person on his (meaning his the said J. B.'s) behalf, and this defendant (meaning himself the said J. B.) understood and believed that such paper (meaning the said paper so signed by him the said J. B. as aforesaid) contained articles of partnership between him (again meaning himself the said J. B.) and the said complainant (again meaning the said T. G.) but whether the said paper was or was not an agreement of such date, and to such purport or effect as in the said bill (meaning thereby the bill of complaint of the said T. G.), in that behalf mentioned, or of any other date, purport, or effect, this defendant (again meaning himself the said J. B.) cannot set forth as to his knowledge, belief, or otherwise, save as aforesaid, and from the information of the said complainant, (again

meaning the said T. G. and the said paper was signed by this defendant (again meaning the said J. B.) without any friend being present on his (meaning the said J. B.'s) part, and this defendant (again meaning the said J. B.) when he (again meaning the said J. B.) signed the said paper, relied solely on the said complainant (meaning the said T. G.) that he (meaning the said T. G.) would deal fairly by him; (meaning himself the said J. B.) and this defendant (again meaning himself the said J. B.) says, that at the time he (again meaning himself the said J. B.) signed, the said complainant's wife (again meaning the said T. G.'s wife) was acting as the landlady of the said public-house, and sold all the liquors that were sold in the house, and received the money for the same for about a month, when the said complainant (again meaning the said T. G.) as this defendant (again meaning himself the said J. B.) has been informed, and believes, employed one Mr. H. a broker to let the said public-house without this defendant's (again meaning the said J. B.'s) knowledge or consent, but this defendant (again meaning himself the said J. B.) being informed thereof by the said Mr. H., this defendant (again meaning himself the said J. B.) thereupon or soon afterwards told the said complainant (again meaning the said T. G.) he would have nothing more to do with him; and this defendant (again meaning himself the said J. B.) demanded from the said complainant, (again meaning the said T. G.) the money he and his wife had received on account of the liquor and beer sold in the said house, but the said complainant (again meaning the said T. G.) refused to pay the same, and still retains the same or has applied it to his (again meaning the said T. G.'s) own use; and this defendant (again meaning himself the said J. B.) has always been ready to pay to the said complainant, (again meaning the said T. G.) the residue of the said 36*l.*, upon being allowed the money the said complainant (again meaning the said T. G.) and his wife received for liquor and beer as aforesaid, and this defendant (again meaning the said J. B. saith he (again meaning himself the said J. B.) has not ever since the 22nd day of November, 1803, been in the occupation of the said messuage or tenement, called the Red Lettuce, but the same has been let, and this defendant (again meaning the said J. B.) has been in the receipt of the rents and profits thereof; and this defendant (again meaning himself the said J. B.) submits that he (again meaning himself the said J. B.) ought not, under the circumstances aforesaid, to be compelled to account for all the sums of money received by him since the said, &c. for, or in

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respect of the rents and profits of the said premises or any part thereof, for the defendant (again meaning the said J. B.) says that the agreement which is in the said bill (meaning the said bill of complaint of the said T. G.) alluded to have been signed by him, is not according to the verbal agreement entered into between this defendant, (again meaning himself the said J. B.) and the said complainant, (again meaning the said T. G.) and this defendant (again meaning himself the said J. B.) did not know what was the contents of the paper, (meaning the said paper) he (again meaning himself the said J. B.) signed, except that he (again meaning himself the said J. B.) conceived it to be an agreement for a partnership between the said complainant (again meaning the said T. G.) and this defendant, (again meaning himself the said J. B.) As by the said answer of him the said J. B. still remaining in the said court of Chancery aforesaid, at Westminster aforesaid, in the county aforesaid, amongst other things will more fully appear; whereas in truth and in fact, the said J. B. at the time of his so signing the said paper, and of his making oath and swearing as aforesaid, was acquainted with and well knew the contents of the said paper so by him signed as aforesaid; and whereas in truth and in fact, before the said J. B. so signed the said paper as aforesaid, the same was read to him, to wit, at the said parish of St. Andrew, Holborn, aforesaid, in the county aforesaid; and whereas in truth and in fact, the said J. B. at the time when he so signed the said paper as aforesaid, and making answer and swearing as aforesaid, well knew that the said paper contained the said agreement in the said bill of complaint mentioned, and that the same paper did not contain any articles of partnership between him the said J. B. and the said T. G., to wit, in, &c. aforesaid; and whereas in truth and in fact, the said J. B. at the time of his making oath and swearing as aforesaid, well knew that the said W. H. had been employed by the said T. G. to let the said public-house in the said answer of him the said J. B. mentioned, to wit, in, &c. aforesaid; and whereas in truth and in fact, the said agreement in the said bill of complaint mentioned, and alluded to have been signed by him, was and is according to the verbal agreement entered into between the said J. B. and the said T. G., as he the said J. B. at the time of his so signing the said paper, and making oath and swearing as aforesaid, well knew, to wit, in, &c. aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. B. on the said, &c. at the parish of Saint Andrew, Hol-

Reference to the answer filed.

Assignments of perjury.

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Conclusion.

born, aforesaid, in the county of Middlesex aforesaid, upon his oath aforesaid, before the said A. P. (he the said A. P. then and there being one of the masters of the said Court of Chancery, and then and there having sufficient and competent power and authority to administer an oath to the said J. B. in that behalf) falsely, wickedly, maliciously, knowingly, wilfully, and corruptly, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the great damage of the said T. G., to the evil example of all others, and against the peace of our lord the now king, his crown, and dignity.

The like, varying from the last in describing the oath (a)

[Same as the last to the asterisk, in page 388.] And the jurors, &c. do further present, that the said A. W. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and minding and intending unjustly to aggrieve the said R. W., then and there, to wit, on, &c. at the said, &c. upon his oath aforesaid, before the said E. L. (then being one of the masters of the said Court of Chancery, and then and there having sufficient and competent power and authority to administer an oath to the said A. W. in that behalf,) falsely, maliciously, knowingly, wickedly, wilfully, and corruptly did say, depose, swear, exhibit, and make answer in writing to the said bill of complaint of the said R. W. amongst other things as follows, (that is to say) this defendant (meaning himself the said A. W.) admits that, &c. [*here state matter sworn and imnuendoes.*] As by the said answer of him the said A. W. now remaining in the said Court of Chancery at, &c. aforesaid, (amongst other things) will more fully appear; whereas in truth and in fact, the said A. W. at the time of his so taking his aforesaid oath and making answer and swearing as aforesaid, well knew that the said shares of the said Drury Lane Theatre, so by him sold to the said R. W. as aforesaid, were not at the time when he the said A. W. so sold them to the said R. W. as aforesaid, of more value than the sum for which he so sold them to the said R. W. as aforesaid, to wit, at, &c. aforesaid; and whereas in truth and in fact, the said A. W. at the time of his so taking his aforesaid oath and making answer

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(a) This was the indictment against Albany Wallis, A. D. 1800, he was acquitted on the merits, see the last precedent, and notes.

and swearing as aforesaid, well knew that the said shares of the said Drury Lane Theatre, so by him sold to the said R. W. as aforesaid, were not, at the time when he the said A. W. so sold them to the said R. W. as aforesaid, of so much value as the sum for which he so sold them to the said R. W. as aforesaid, to wit, at the said, &c.; and whereas in truth and in fact, the said, &c. [*here were stated several other assignments of perjury, and the indictment concluded as the last.*]

Middlesex. That M. F. late of, &c. on, &c. did exhibit her bill of complaint in writing, in the Court of Chancery of our said lord the king (the same court then and still being at W. in the county of M.) against one H. T. of L. brewer, directed to the right honorable A. lord B. baron of C. lord high chancellor of Great Britain, thereby shewing and explaining the claim, right, title, and interest of her the said M. F. of, in, and to the rents, issues, and profits, arising and accruing from and out of certain premises, to wit, a certain messuage or dwelling-house, a certain garden, and divers, to wit, six acres of land, with the appurtenances, situate and being at the parish of E. in the said county of M. in the said bill of complaint particularly mentioned and described, and also by her said bill then and there, to wit, on, &c. aforesaid, at W. aforesaid, in the county aforesaid, complaining and shewing that divers large sums of money, being rents, issues, and profits arising and accruing, due to her the said M. F. from and out of, and in respect of the said premises above mentioned, had come to the hands of him the said H. T. who had retained the same, and refused to account with her the said M. F. in any manner whatsoever for the same or any part thereof, whereupon the said M. F. by her said bill of complaint did pray (amongst other things) that the said H. T. might set forth in his answer to the said bill of complaint, the amount and value of the yearly rents, issues, and profits of the premises (meaning the premises in the said bill of complaint mentioned, and herein also above mentioned); and that he the said H. T. might account with her the said M. F. for such of those rents, issues, and profits, as came to the hands of him the said H. T. at a short day, to be fixed by that honorable court, as in and by

The like where defendant swore to belief as to a part with proper assignments (a).

(a) See this precedent, Cro. to 391, and the notes ante, C. C. 8th ed. 342. 2 Stark. 524. 302 to 313. and the precedents, ante, 384

the said bill of complaint of her the said M. F. remaining filed as of record in the said Court of Chancery, at W. aforesaid, in the said county of M. (amongst other things) more fully appears. And the jurors aforesaid, upon their oath aforesaid, do further present, that it became material and necessary, in the said cause, between the said parties, for the said H. T. to swear and set forth in his answer to the said bill of complaint, whether he the said H. T. knew the amount and value of the yearly rents, issues, and profits of the said premises, and whether he the said H. T. ever did receive any of the rents, issues, or profits of the said premises, and whether he the said H. T. was in any manner whatsoever accountable to the said M. F. for, or by reason of, any of the matters or things in the said bill mentioned. And the jurors, &c. do further present, that the said H. T. the defendant named in the said bill of complaint of the said M. F. afterwards, to wit, on, &c. at the parish of St. D. in the W. in the said county of M. (a) came in his own proper person before A. A. esq. then being one of the masters of the said Court of Chancery, and then and there before the said A. A. esq. exhibited and produced the answer in writing of him the said H. T. to the aforesaid bill of complaint of her the said M. F. intituled, "The answer of H. T. brewer, the defendant, to the bill of complaint of M. F. widow, complainant," and that the said H. T. then and there in due form of law was sworn, and did take his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said answer before the said A. A. esq. then being one of the said masters of the said Court of Chancery (and then and there having sufficient and competent power and authority to administer an oath to the said H. T. in that behalf,) and that the said H. T. being so sworn as aforesaid, he the said H. T. did, upon his corporal oath, concerning the matters contained in the said answer before the said A. A. then as aforesaid, being one of the said masters of the said Court of Chancery, then and there swear, that so much of the said answer of him the said H. T. so as aforesaid produced and exhibited before the said A. A. as concerned the acts and deeds of him the said H. T. he the said H. T. knew to be true, and that so much of the said answer of him the said H. T. as concerned the acts and deeds of any other person, he the said

(a) See ante, 323.

H.T. believed (a) to be true. And that the said H.T. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and minding and intending unjustly to aggrieve the said M. F. the complainant aforesaid, did then and there, upon his the said H.T.'s oath aforesaid, in his answer aforesaid, before the said A. A. then and there being one of the said masters of the said Court of Chancery as aforesaid, (and having such sufficient and competent power and authority as aforesaid) falsely, knowingly, wickedly, maliciously, wilfully, and corruptly, by his own act and consent, answer, swear, and affirm in writing, (amongst other things) in substance and effect following, that is to say, that he the said H. T. did not know the amount and value of the yearly rents, issues, and profits of the said premises, (meaning the said premises in the said bill of complaint mentioned, and herein also before mentioned) and that he the said H. T. never did receive any of the rents, issues, or profits of the said premises, (again meaning the said premises in the said bill of complaint mentioned, and herein also before mentioned) and that he the said H. T. was not in any manner whatsoever accountable to the complainant (meaning the said M. F. the complainant aforesaid) for or by reason of any of the matters or things in the bill mentioned (meaning the aforesaid bill of complaint of her the said M. F.) As by the said answer of him the said H.T. remaining filed as of record in the said Court of Chancery at W. aforesaid, in the said county of M. (amongst other things) more fully appears; whereas in truth and in fact he the said H. T. at the time he so took his oath as aforesaid, well knew the amount and value of the yearly rents, issues, and profits of the said premises, that is to say, the said messuage or dwelling-house, garden, and land, with the appurtenances in the said bill of complaint mentioned, and herein also above-mentioned; and whereas in truth and in fact he the said H. T. at that time, to wit, at the time he so took his oath as aforesaid, well knew, that for divers, to wit, four years successively next before that time (the latter of which four years having ended and been determined, on, &c.) the value of the rents, issues, and profits of the same premises, amounted to, and had been ascertained at the sum of thirty-eight pounds, for and in respect of each of

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(a) It is now settled that an indictment will lie for swearing to a belief that a matter is true

when it is known to be false,
1 Leach, 327.

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the said four years, and that the said sum of thirty-eight pounds for each of these years had accrued due to the said M. F. and been accounted for to him the said H. T. by one J. P. being, during all the said four years respectively, the under-tenant and possessor of the said premises; and whereas in truth and in fact, he the said H. T. on divers days and times, in and during the space of the said four years, did accept and receive of and from the said J. P. as such under-tenant as aforesaid, the sum of one hundred and fifty-two pounds of lawful money of Great Britain, as being the rents, issues, and profits of the said premises, that is to say, the said messuage or dwelling-house, garden, and six acres of land, with the appurtenances in the said bill of complaint mentioned, and herein also before mentioned; and whereas in truth and in fact, the said sum of one hundred and fifty-two pounds, so received by him the said H. T. as aforesaid, was the proper money of the said M. F. accruing due to her the said M. F. as being the rents, issues, and profits aforesaid; and whereas in truth and in fact, he the said H. T. at the time he so took his oath as aforesaid, well knew that the said sum of one hundred and fifty-two pounds was the proper money of the said M. F. accruing due to her the said M. F. in manner in that behalf aforesaid, and that he the said H. T. was, at the time of taking his said oath, and before, liable to account, and ought to account, to and with her the said M. F. for the same; and whereas in truth and in fact, he the said H. T. at the time he so took his oath as aforesaid, was justly and truly indebted to the said M. F. in the said sum of one hundred and fifty-two pounds, as being such rents, issues, and profits as aforesaid, and was at that time accountable to, and ought to have accounted with her the said M. F. for the same; and whereas in truth and in fact, at the time the said H. T. so took his oath as aforesaid, she the said M. F. had a just and legal claim to, and of right ought to have and receive all the rents, issues, and profits which had accrued, arisen, and become payable from, out, and in respect of the said premises, that is to say, the said messuage or dwelling-house, garden, and land, with the appurtenances in the said bill of complaint mentioned, and herein also before mentioned, for and during the said four years respectively. And so, &c. [*as ante*, 391.]

That one O. G. late of, &c. on, &c. did exhibit his English bill of complaint, in writing, in the court of our said lord the king, of his exchequer (the said court then being at W. in the said county of M.) against one T. S. late of, &c. and one J. H. late of, &c. directed to the right honorable W. P. chancellor and under-treasurer of his majesty's court of exchequer at W.; the honorable Sir J. S. knight, lord chief baron of the same court, and the rest of the barons there, for the purpose, and praying (amongst other things) that some deed or deeds, instrument or instruments which the said O. G. in and by the said bill alleged he had been prevailed upon to execute, and which the said O. G. in and by the said bill alleged he had discovered, purported to be a conveyance of all his the said O. G.'s interest in certain premises in the said bill mentioned, might be delivered up to the said O. G. to be cancelled; and that they the said T. S. and J. H. might in the mean time be restrained, by the order and injunction of the said court of exchequer, from commencing any action at law against him the said O. G. or bringing or prosecuting any ejectment or ejectments, or any other action or actions at law, touching the premises in the said bill in that behalf contained, as in and by the said bill of complaint of the said O. G. remaining filed, as of record in the said court of exchequer, at W. aforesaid, in the said county of M., (amongst other things) more fully appears. And the jurors aforesaid do further present, that the said T. S. one of the defendants named in the said bill of complaint of the said O. G. afterwards, to wit, on, &c. at, &c. came in his own proper person before Sir B. H. knight, then being one of the barons of his majesty's said court of exchequer, at Westminster, and then and there to wit, on, &c. last aforesaid, in the said parish of St. George, Bloomsbury, in the county of Middlesex, before the said Sir B. H. exhibited and produced the answer in writing of him the said T. S. and of the said J. H. to the aforesaid bill of complaint of the said O. G. intituled, "the joint and several answer of T. S. and J. H. gentlemen, the defendants, to the bill of complaint of O. G. complainant;" and that the said T. S. then and there in due form of law was sworn and did take his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said answer before the said Sir B. H. knight, then being one of the said barons of

For perjury in an answer before one of the barons of the Exchequer (a).

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(a) See Cro. C. C. 8th ed. 357; and same precedent, 2 Stark. 516.

the said court of exchequer (and then and there having sufficient and competent power and authority to administer an oath to the said T. S. in that behalf,) and that the said T. S. being so sworn as aforesaid, did, upon his corporal oath, concerning the matters contained in the said answer before the said Sir B. H. knight, then and there being such baron as aforesaid, then and there swear, that so much of the said answer of him the said T. S. so as aforesaid produced and exhibited before the said Sir B. H. as concerning the acts and deeds of him the said T. S. he the said T. S. knew to be true, and that so much of the said answer of him the said T. S. as concerned the acts and deeds of any other person, he the said T. S. believed to be true; and that the said T. S. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and minding and intending unjustly to aggrieve the said O. G. the complainant aforesaid, did then and there, upon his the said T. S.'s oath aforesaid, in his answer aforesaid, before the said Sir B. H. knight, then and there being such baron as in that behalf aforesaid, and having such sufficient and competent power and authority as aforesaid, falsely, knowingly, wickedly, maliciously, wilfully, and corruptly, by his own act and consent, answer, swear, and affirm in writing (amongst other things) as follows, that is to say, and this defendant T. S. (meaning himself the said T. S.) saith, that he (meaning himself the said T. S.) hath since (meaning since the obtaining the said conveyance from the said O. G. as in the said bill of complaint is mentioned,) purchased one other third part or share of and in the said premises, (meaning the said premises in the said bill of complaint mentioned,) at or for the price or sum of two hundred and fifty pounds, (meaning two hundred and fifty pounds of lawful money,) but which (meaning which sum of two hundred and fifty pounds,) this deponent T. S. (meaning himself the said T. S.) thought and is convinced was a high price for the third part or share, (meaning the third part or share of the said premises,) and which (meaning which price,) he (meaning himself the said T. S.) was induced to give, because of his, (meaning the said T. S.'s) having already purchased from the said complainant, (meaning the said O. G.) the other two-thirds (meaning the other two-thirds of the aforesaid premises.) As by the said answer of him the said T. S. remaining filed, as of record in the said court of Exchequer, at Westminster aforesaid, in the county of M. aforesaid, (amongst other things) more fully appears, which said several matters so

sworn to and affirmed by the said T. S. in his said answer to the said bill of complaint as aforesaid, were material and pertinent to the due investigation and ascertaining of the truth of the matters in the said bill complained of, and therein mentioned and referred to as aforesaid (a). Whereas, in truth and in fact, he the said T. S. never did purchase one other third part or share of and in the said premises, in the said bill of complaint mentioned, at or for the price or sum of two hundred and fifty pounds of lawful money, or for any price or sum of money whatsoever. And so, &c. [as *ante*, 391.]

IN COURTS OF EQUITY,—IN ANSWER TO INTERROGATORIES.

That one E. F. heretofore, to wit, on, &c. did exhibit certain interrogatories in writing, in his majesty's high court of Chancery, at W. &c. in a certain cause before then commenced by English bill of complaint, and then depending and at issue in the said court, after certain pleadings and proceedings had been had therein, in which said suit one C. D. was complainant, and the said E. F. was respondent, in order that the said interrogatories might be administered, according to the course and practice of the said court, to certain witnesses, to be produced, sworn, and examined in the said cause, on the part and behalf of the said E. F. the said defendant, therein touching and concerning a certain written paper, purporting to contain an agreement for the lease of a certain house and premises therein mentioned, from the said C. D. to the said E. F. and also touching and concerning a certain other written paper, purporting to be the draft of such lease. And the jurors, &c. do further present, that it became and was made a material question in the said cause between the said parties, and to be deposed to by the said witnesses, in answer to the said interrogatories, whether the said C. D. had observed or declared that he would release the said E. F. from the said agreement, or

For perjury in answer to interrogatories exhibited in Chancery (b).

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(a) This averment of materiality is not in Cro. C. C. 8th edit. 357; but *quare*, if not advisable to insert it.

(b) This is a MS. precedent

in the collection of a gentleman at the bar, see also 4 Wentw. 292, post, and notes, ante, 302 to 318.

had released him from the performance thereof, or relinquished, abandoned, or given up the same, and in and by one of the interrogatories exhibited as aforesaid, the said witnesses were interrogated as follows, that is to say, [*here copy the interrogatories, with necessary innuendoes.*] And the jurors, &c. do further present, that A. B. late of, &c. and one of the witnesses to whom the interrogatories in the said cause were to be, and were accordingly, afterwards, to wit, on, &c. at, &c. administered, then and there came in his own proper person, before, &c. then being an examiner in the said court of Chancery, and having seen and understood the said interrogatories so exhibited in the said court as aforesaid, then and there, to wit, on, &c. last aforesaid, at, &c. aforesaid, before the said, &c. he then and there, being such examiner in the said court of Chancery as aforesaid, and then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf, was duly sworn and took his corporal oath on the holy gospel of God, before the said, &c. so being such examiner, and having such power, &c. And the said A. B. then and there, on his said oath before the said examiner, did swear, that he the said A. B. would true answer make to all such questions as should be asked him upon those interrogatories at the time of his examination, that he would speak the truth, the whole truth, and nothing but the truth, without favor or affection to the said parties in the said cause. And the jurors, &c. do further present, that the said A. B. afterwards, to wit, on, &c. was duly examined in the said high court of Chancery, at, &c. aforesaid, to wit, at, &c. aforesaid, according to the course and custom of the said court, upon the said interrogatories, and that he the said A. B. not having, &c. but being moved and seduced, &c. and minding and intending unjustly to aggrieve the said C. D. the complainant aforesaid, did then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, in his answer to the said fourth interrogatory, knowingly, falsely, wickedly, and corruptly, by his own act and consent, amongst other things, answer, swear, and affirm, in writing, as follows, that is to say, [*here state the answer, with necessary innuendoes.*] As by the said answer of the said A. B. to the said fourth interrogatory, remaining affiled in the said high court of Chancery, at W. aforesaid, reference being thereunto had, will, amongst other things, more fully appear. Whereas in truth and in fact, the said complainant C. D. did not at the time, or on the occasion mentioned, in or alluded to by the said deposition of the said A. B. or at any

other time, or on any other occasion whatsoever, say or observe to the said A. B. that if E. F. had any thing to object, respecting the said agreement and lease, he the said C. D. would release him from the said agreement, on his paying the expence incurred; and whereas in truth and in fact, the said C. D. did not release the said E. F. from her said agreement; and whereas in truth and in fact the said A. B. did not, at that or any other time, or on any other occasion whatsoever, say to, or inform the said C. D. that if the said E. F. was not permitted to keep a school in the said house and premises, what had been theretofore done, was, or must be considered as null and void, or make any declaration to that or the like effect. And so the jurors aforesaid, &c. say, that the said A. B. on, &c. at, &c. before the said, &c. then and there being such master, and having such power, &c. to administer the said oath to the said A. B. as aforesaid, of his own act and consent, and of his own wicked and corrupt mind and disposition, knowingly, falsely, wickedly, wilfully, and corruptly, in manner and form aforesaid, upon his oath aforesaid, in and by his answer to the said interrogatory, and his deposition aforesaid, did commit wilful and corrupt perjury, to the great displeasure, &c. in contempt, &c. to the great damage, &c. [*as ante*, 391.]

That M. E. B. commonly called the countess of S. on, &c. did exhibit certain interrogatories, in writing, in his majesty's high court of Chancery, (the said court then and still being held at W. in the county of M.) in a certain cause, then and long before commenced by English bill of complaint, then depending and at issue in the said court of Chancery, wherein the said M. E. B. commonly called the countess of S. by W. L. esquire, her next friend, was the complainant, and A. R. B. esquire, H. B., T. G., esquire, W. B. esquire, and G. S. esquire, the defendants, in order that the said interrogatories might be administered according to the course and practice of the said court of Chancery to certain witnesses to be produced, sworn, and examined in the said cause, so then depending and at issue on the part and behalf of herself the said M. E. B. the said complainant. And the jurors, &c. do further present, that it became and was made a material question between the said parties in the said cause, to inquire in and

For perjury in an answer to interrogatories in Chancery (a).

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(a) See 4 Wentw. 292, and the last precedent and note, ante, 302 to 318.

by the said interrogatories so exhibited, touching and concerning a certain deed or instrument in the complainant's bill, in the said cause mentioned, and the time of executing the same; and also touching and concerning a certain marriage before then had and solemnized between the said M. E. B. and the said A. R. B. and touching and concerning the cause and consideration of the said deed or instrument, and whether such deed or instrument was prepared or got ready for execution, in contemplation of the said marriage, and after the said M. E. B. had consented to such marriage, and it was then and there, in and by the third interrogatory of the said interrogatories so exhibited by the said M. E. B. as aforesaid, set forth in manner and form, and to the effect following, that is to say—Had the complainant (meaning the said M. E. B.) as you (meaning the said witnesses to be produced, sworn, and examined as aforesaid), know, or for any or what reason believe at any time before, and how long before her marriage with the defendant (meaning the said A. R. B.) her present husband, and after the death of her first husband, any intention, design, and inclination to intermarry with, or did she (meaning the said M. E. B.) in any and what manner intimate, [*here set forth the interrogatory, with proper innuendoes, to the conclusion, as follows,*] declare, as by the said third interrogatory affiled, and remaining of record in the said high court of Chancery at W. aforesaid, in the said county of M. may more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present, that G. W. late of, &c. who was and is one of the witnesses to whom the said interrogatories in the said cause were to be, and were accordingly administered, afterwards, to wit, on, &c. at the parish of St. D. in the West, in the said county of M. came in his own proper person, before T. W. esquire, then being one of the masters of the said court of Chancery, and having seen the said interrogatory so exhibited in the said court of Chancery, then and there, to wit, at the said parish, &c. before the said T. W. esquire, so being such master of the said court of Chancery, was duly sworn, and took his corporal oath on the holy gospel of God, before the said T. W. esquire, (then being one of the masters of the said court of Chancery, and then and there, to wit, at the parish, &c. aforesaid, have sufficient power and authority to administer an oath in that behalf to the said G. W.) and in and by the said oath, the said G. W. on his said oath before the said T. W. esquire, (the said T. W. esquire, then having such

sufficient power and authority in that behalf as aforesaid), did swear that he, the said G. W. would true answer make to all such questions as should be asked him upon those interrogatories, at the time of his examination, that he would speak the truth, the whole truth, and nothing but the truth, without favor or affection to the parties. And the jurors, &c. further present, that the said G. W. late of the parish of G. in the said county of R. afterwards, to wit, on, &c. was duly examined in the said high court of Chancery at W. aforesaid, to wit, at the said parish of St. D. in the West, in the said county of M. according to the course and custom of the said high court of Chancery, upon the said interrogatories, and that he, the said G. W. not having, &c. but being moved, &c. and minding and intending unjustly to aggrieve the said A. R. B. one of the defendants aforesaid, did, then and there, to wit, at the parish of St. D. in the West aforesaid, in the said county of M. upon his oath aforesaid, in his answer to the said third interrogatory, knowingly, falsely, wickedly, maliciously, and corruptly, by his own act and consent (amongst other things), answer, swear, and affirm in writing, as follows, that is to say, and this deponent (meaning himself the said G. W.) further saith, that he (meaning himself the said G. W. is well convinced in his own mind, the complainant (meaning the said M. E. B.) never had a liking for or an intention to marry her present husband (meaning the said A. R. B.) until the night before she was married; and therefore could not resolve upon a marriage with him (meaning the said A. R. B.) and saith, that he (meaning himself, the said G. W.) does not, &c. [*state the matter sworn with innuendoes*], as by the said answer to the said third interrogatory, remaining affiled in the said high court of Chancery, at W. aforesaid, may, amongst other things, more fully appear; whereas, in truth and in fact, he, the said G. W. at the time he took his said oath, and also at the time he was so examined as aforesaid, well knew that the said M. E. B. had had an intention to marry the said A. R. B. her present husband, long before, to wit, for the space of two months before the night on which the said M. E. B. was married to the said A. R. B. and whereas, in truth and in fact, the said A. R. B. the complainant's present husband, had, between the time of the death of the earl of S. then deceased, &c. [*assign the perjury in different ways, according to the facts.*] And so the jurors aforesaid, upon their oath aforesaid, say, that the said G. W. on the said, &c. at the parish of St. D. &c. aforesaid, before the said T. W. esq.

then being one of the said masters in Chancery, and so as aforesaid having such sufficient power and authority to administer the said oath to the said G. W. as aforesaid, knowingly, falsely, wickedly, maliciously, wilfully, and corruptly, in manner and form aforesaid, on his oath aforesaid, in and by his answer to the said third interrogatory, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the great damage of the said A. R. B. to the evil and pernicious example of all others, and against the peace of our lord the now king, his crown and dignity.

IN CIVIL PROCEEDINGS,—IN BANKRUPTCY.

For perjury by a bankrupt on his examination before the commissioners (a).

That heretofore, to wit, on, &c. a certain commission of bankrupt, under the great seal of Great Britain, was duly awarded and issued against T. W. H. late of, &c. (by the name and addition of, &c.) bearing date at, &c. directed to, &c. whereby, after reciting that our said lord the king had been informed that the said T. W. H. using and exercising the trade of merchandize, by way of bargaining, exchange, bartering, and chevisance, seeking his trade of living by buying and selling, had become bankrupt within the several statutes (b) made against bankrupts, to the intent to defraud and hinder W. H. H., D. N. and J. N. of, &c. of their just debts and duties, to them due and owing, our said lord the king did name, assign, appoint, constitute, and ordain them, the said, &c. his said majesty's special commissioners, thereby giving full power and authority to them four, or three of them, to proceed according to the statutes in the said commission mentioned, and

(a) This indictment was settled by a very eminent pleader, see notes, ante, 302 to 318. See also, 1 Montague Bankr. Law, 429, 430; and the next precedent, and those against Senior and Roberts, post, "Indictment for offences against trade." The 6 Geo. 4. c. 16. s. 99, makes false swearing, &c. contrary to the effect and object of the bankrupt laws, per-

jury, and punishable accordingly. Strict proof of the trading, petitioning creditor's debt, and act of bankruptcy, is necessary, 1 Rose. B. C. 223. 3 Campb. 96. 1 Taunt. 71; though not so where the perjury is by a witness, 3 Campb. 96, ante.

(b) The only act now in force, is the 6th Geo. 4. c. 16.

all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold, and customary goods, debts, and other things whatsoever, but also concerning all other persons who, by concealment, claim, or otherwise, did or should offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said statutes, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes; as by the said commission (amongst other things therein contained), doth more fully appear. And the jurors, &c. do further present, that afterwards, to wit, on, &c. aforesaid, at London, to wit, in the parish of St. Michael Bassishaw, in the ward of Bassishaw, the said T. W. H. was by the said, &c. being three of the aforesaid commissioners, in the said commission named, in due form of law declared and adjudged a bankrupt within the true intent and meaning of the several statutes made, and then in force concerning bankrupts, or some, or one of them; and afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, notice was duly given and published, in a certain printed paper, called the London Gazette, that a commission of bankrupt was awarded and issued forth against the said T. W. H., and he being declared a bankrupt was thereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the 10th and 18th days of the November then instant, at 9 o'clock in the forenoon, and on the 24th day of December then next at 10 o'clock in the forenoon, and make a full discovery and disclosure of his estate and effects, and at the last sitting the said T. W. H. was thereby required to finish his examination. And the jurors, &c. do further present, that the said T. W. H. afterwards, to wit, on the said, &c. at Guildhall, London aforesaid, to wit, at, &c. aforesaid, came in his proper person, and then and there surrendered and submitted himself to be examined touching his estate and effects, by and before the said, &c. being the major part of the said commissioners, in the said commission named and authorized, in order to make a full discovery and disclosure of his said estate and effects and to finish his examination pursuant to the said notice so given as aforesaid, and the said T. W. H. was then and there accordingly examined and duly sworn, and did take his corporal oath upon the Holy Gospel of God, before the said R. F. &c. (they the

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said, &c. then and there having competent power and authority to administer an oath to the said T. W. H. in that behalf.) And the said T. W. H. being so sworn, and being then and there interrogated and asked, what household furniture he had? he the said T. W. H. not having, &c. but being moved and seduced, &c. and not regarding the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there, to wit, on, &c. last aforesaid, at, &c. aforesaid, falsely, and maliciously, wickedly, wilfully, and corruptly, on his oath aforesaid, before the commissioners last aforesaid, answer, swear, and depose, that he the said T. W. H. had none, (thereby then and there meaning that he the said T. W. H. had no household furniture at the time of issuing the said commission of bankrupt,) whereas, in truth and in fact, the said T. W. H. had sundry articles of household furniture at the time of issuing the said commission of bankrupt, to wit, at, &c. aforesaid. And the jurors, &c. do further present that the said T. W. H. being so sworn as aforesaid, and being then and there, to wit, on, &c. last aforesaid, at, &c. aforesaid, further interrogated and asked, whether he the said T. W. H. did, in consequence of a valuation which he then and there alleged to have been made by his brother, represent, at a meeting of his creditors, that he was able to pay 17s. in the pound, in the month of September then last, he the said T. W. H. did then and there, to wit, on, &c. last aforesaid, at, &c. aforesaid, falsely, &c. on his oath aforesaid, before the said last-mentioned commissioners, answer, swear, and depose, that he the said T. W. H. did not, (thereby then and there meaning, that he the said T. W. H. did not, in consequence of the said valuation, represent, at a meeting of his creditors, that he was able to pay 17s. in the pound, on their respective debts in the month of September, then last;) whereas, in truth and in fact, the said T. W. H. did, in consequence of the said valuation, represent at a meeting of his creditors, that he was able to pay 17s. in the pound, on their respective debts in the month of September then last, to wit, at, &c. aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said T. W. H. on the said, &c. at, &c. aforesaid, on his said oath before the said R. F., J. B., and P. S., (so as aforesaid having competent power and authority to administer the said oath to the said T. W. H. in that behalf,) of his wicked mind, did falsely and in manner and form aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his

laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present, that the said T. W. H. not being able satisfactorily to answer all such questions as were put to him, touching his estate and effects, without a further investigation of his books and papers, the said R. F., J. B., and P. S., so being such commissioners as aforesaid, did, at the request of the said T. W. H., and with the consent of his creditors then present, adjourn the said T. W. H.'s last examination, from, &c. until, &c. at Guildhall, London aforesaid, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said T. W. H. afterwards, to wit, on the said, &c. at Guildhall, London aforesaid, to wit, at, &c. aforesaid, again came in his proper person, and then and there again surrendered and submitted himself to be examined touching his estate and effects, by and before the said R. F., J. B., and P. S., being the major part of the said commissioners in the said commission named and authorized, in order to make a full discovery and disclosure of his estate and effects, and to finish his examination; and the said T. W. H. was then and there accordingly examined and duly sworn, and did take his corporal oath upon the Holy Gospels of God, before the said R. F., J. R., and P. S., (they the said R. F., J. R., and P. S., then and there having competent power and authority to administer an oath to the said T. W. H. in that behalf,) and the said T. W. H. being so sworn as last aforesaid, then and there produced to and before the said last-named commissioners, certain accounts in writing marked respectively with the letters A. and B. and signed by the said T. W. H., purporting to contain an account of all the credits, debts, and losses in trade of him the said T. W. H., in which said account marked with B., and purporting to contain an account of the debts and losses in trade of the said T. W. H., there were and are the following items, (that is to say) overpaid for stock in Piccadilly, £200 (thereby then and there meaning that he the said T. W. H. had paid for certain stock, before then purchased by him the said T. W. H. at his house in Piccadilly, the sum of £200 over and above the value,) [*here set out the other items contained in the said account, with the immuendoes.*] And the said T. W. H. being then and there interrogated, and asked, whether the accounts so produced and signed by him the said T. W. H., purporting as aforesaid, were just and true accounts? He the said T. W. H. then and there, to wit, on, &c. last, aforesaid, at, &c. afore-

Second count, assigning perjury on an adjourned examination.

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said, falsely, &c. on his oath last aforesaid, before the said last-mentioned commissioners, answered, swore, and deposed, that they were, (thereby then and there meaning that the said accounts so produced and signed by the said T.W. H. purporting as aforesaid, were just and true accounts,) whereas, in truth and in fact, the said accounts so produced and signed by him the said T.W. H., purporting as aforesaid, were not just and true accounts: but on the contrary thereof, the said account marked with the letter B. so produced and signed by him, the said T.W. H. purporting as aforesaid, was false in this, to wit, that he the said T.W. H. had not paid for the said stock so purchased by him the said T.W. H. at his house in Piccadilly, the sum of £200 over and above the value thereof; and the said last-mentioned account was also false in this, to wit, that, [here negative the remaining items in like manner.] And so, &c. [as in first count.] Third count stated, that a commission had issued, wherein defendant had been duly declared a bankrupt, and that, at his last examination, he did, &c. stating his answer to the interrogatories fuller than in second count.

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For perjury by a witness, examined before commissioners, as to place where bankrupt had secreted himself (a).

[The indictment stating the trading of T. S., his debt to the petitioning creditor and others, his becoming bankrupt, the exhibiting of the petition for the commission, and the issuing of the commission, as in the indictment against Senior a bankrupt, for embezzling his effects, post, "indictments for offences against trade," and then proceeded as follows:] Which said commission, afterwards, to wit, on, &c. in the said, &c. to wit, at, &c. aforesaid, in the county of, &c. aforesaid, was duly delivered to the said, &c. the major part of the said commissioners named and authorized in and by the said commission, to be executed in due form of law; and that by virtue of which said commission, and by force of the statutes in that case made and provided, afterwards, to wit, on the said, &c. to wit, at, &c. aforesaid, the said Charles, &c. &c. did, before they or any of them began to act as a commissioner or commissioners in execution of the said commission, or any of the powers and

(a) This was the indictment against Patrick Tonym, Easter T. 41 Geo. 3. from the crown-office. *Quære*, as to the necessity of stating so much of the preliminary proceeding,

see ante, 306, 7, 8; see also the last precedent, and the indictments against Senior and Roberts, post, "for offences against trade, &c."

authorities given and granted by any act or acts of parliament in force concerning bankrupts, severally and respectively take the oaths prescribed and appointed to be taken by commissioners of bankrupt, before they proceed in any commission of bankrupt, in and by an act of parliament made at Westminster, in the fifth, &c. intituled, "An act to prevent the committing of frauds by bankrupts," the said oath then and there being administered to each of them, the said three last commissioners, by the other two of them, according to the form of the said statute, &c. And the jurors, &c. do further present that the said, &c. so being the major part of the said commissioners as aforesaid, did then and there enter and keep a memorial thereof signed by them respectively among the depositions and other proceedings in the said commission against the said T.S. according to the form of the said statute, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said, &c. so having taken the said oath severally and respectively as aforesaid, by virtue of the said commission, and by force of the several statutes, afterwards, to wit, on, &c. to wit, at the, &c. aforesaid, in due form of law, did adjudge and declare that the said T. S. did become bankrupt before the date and suing forth of the said commission, within the true intent and meaning of the statutes made and in force concerning bankrupts some or one of them. And the jurors, &c. do further present, that the said T.S. being so adjudged and declared a bankrupt as aforesaid, afterwards, to wit, on, &c. to wit, at, &c. aforesaid, the said, &c. so being the major part of the said commissioners by the said commission authorized as aforesaid, pursuant to the directions of the said act of parliament made in the said, &c. intituled "An act to prevent the committing of frauds by bankrupts," did cause due notice to be given and published in the London Gazette, that such commission had been issued, and that the said T. S. had been declared a bankrupt thereon, and that he was required to surrender himself to the commissioners in the said commission named, or the major part of them, on the eighteenth day of January then instant, at ten of the clock in the forenoon, on the twenty-fifth day of the same month, at eleven of the clock in the forenoon, and on the twenty-second day of February then next following at ten of the clock in the forenoon at Guildhall, London, and make a full discovery and disclosure of his estate and effects, when and where the creditors of the said bankrupt were required by the said notice to come to prove

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their debts, and at the second sitting to choose assignees, and at the last sitting he the said bankrupt was required to finish his examination, and the creditors were to assent to, or dissent from, the allowance of his certificate. And the jurors, &c. do further present, that afterwards, and within the time limited by the said notice, (that is to say) at a meeting of the said Charles, &c. &c. being the major part of the commissioners by the said commission authorized, holden at Guildhall in London aforesaid, on the said, &c. the said T. S. did surrender himself to them the said, &c. being the major part of the said commissioners authorized in and by the said commission, and did submit himself to be examined, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that by virtue of the said commission, and by force of the statute in that case made and provided, the said E. F. H. afterwards and before he began to act as a commissioner in the execution of the said commission, or any of the powers and authorities given and granted by any act or acts of parliament in force concerning bankrupts, to wit, on, &c. to wit, at, &c. aforesaid, did take the oath prescribed and appointed to be taken by commissioners of bankrupt in and by the said act of parliament made in the fifth, &c. intituled "An act to prevent the committing of frauds by bankrupts," the said oath then and there being administered to him by the said, &c. so being two of the said commissioners as aforesaid, according to the form of the said statute, and that the said Edward, &c. &c. so being the major part of the said commissioners as aforesaid, did then and there enter and keep a memorial thereof, signed by them: respectively, among the depositions and other proceedings on the said commission against the said T. S. according to the form of the same statute, to wit, at, &c. aforesaid, in the, &c. aforesaid. And the jurors aforesaid, &c. do further present, that afterwards, and whilst the said commission continued and was in force, that is to say, on, &c. it then and there became and was material to examine the said T. S. the said bankrupt, touching and concerning a certain concealment then and there supposed to have been made by him the said T. S. of his estate and effects; but the said T. S. then and there, that is to say, on, &c. aforesaid, wilfully absented himself from the said commission so awarded against him as aforesaid, and from the major part of the said commissioners in the said commission named, so sued out against him the said T. S. and could not be, nor was then and there found to be examined by the said major part of the said com-

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missioners in the said commission named, touching and concerning the said supposed concealment of his said estate and effects, but fled from the said commission, to wit, at, &c. aforesaid. And the jurors, &c. aforesaid, do further present, that afterwards, and whilst the said commission continued and was in force, that is to say, on, &c. the said T. S. so then and there wilfully absented himself from the said commission, and the major part of the said commissioners in the said commission named, so sued out against him the said T. S. as aforesaid, and not being to be found to be examined by the said major part of the said commissioners in the said commission named, touching and concerning such supposed concealment of his said estate and effects under the said commission, it then and there became and was material to apprehend the said T. S. the said bankrupt, and to discover the place to which he the said T. S. had fled, in order to compel him the said T. S. to be examined by and before the major part of the said commissioners in the said commission named, touching and concerning the said supposed concealment of his said estate and effects under the said commission. And that he the said T. S. might then and there be dealt with according to law, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that afterwards, and whilst the said commission continued and was in force, that is to say, on, &c. to wit, at the, &c. aforesaid, in order to apprehend the said T. S. the said bankrupt, and to discover the place to which he the said T. S. had fled as aforesaid, they the said, &c. the major part of the said commissioners in the said commission named, by their certain summons in writing made and signed by them and given under their hands; and directed to one *Patrick Tonyn* the younger, of Farm Street, Berkeley Square, in the county of Middlesex, gentleman, (by the name, style, and description of Captain Tonyn) by virtue of the king's majesty's commission under the great seal of Great Britain grounded upon the several statutes made concerning bankrupts, awarded against T. S. late of Nicholas Lane, London, merchant, directed to them the major part of the commissioners named who had thereunto set their names, and to others, did thereby will and require him the said P. T. to whom that their warrant was directed personally to be and appear before the major part of the said commissioners, on, &c. precisely at twelve of the clock at noon, at the Baptist Head Coffee House, Chancery Lane, London, (meaning thereby the Baptist Head Coffee House

Chancery Lane) in the, &c. aforesaid, in the, &c. aforesaid, then and there to be examined by them the major part of the commissioners by virtue of the said commission and the several statutes therein mentioned, and thereof he was not to fail at his peril. And the jurors, &c. do further present, that afterwards, to wit, on, &c. aforesaid, the said summons of the said major part of the said commissioners was duly left at the chambers of Messrs. Graham, in Lincoln's Inn, in the county of Middlesex, attornies at law, the said, &c. being the then attornies of the said P. T. to wit, on, &c. aforesaid. And the jurors, &c. do further present, that the said, &c. the major part of the said commissioners in the said commission named, met on the said, &c. in the said summons mentioned, at the Baptist Head Coffee House, Chancery Lane, in the, &c. aforesaid, at twelve of the clock at noon of the said last-mentioned day for the purpose of examining the said P. T. of and concerning the said T. S. the said bankrupt, and to discover the place to which the said T. S. had fled, in order that the said T. S. the said bankrupt might be apprehended and be compelled to be examined by the said major part of the said commissioners in the commission named, touching and concerning the said concealment then and there supposed to have been made by the said T. S. of his estate and effects, and that the said T. S. might be then and there dealt with according to law, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said P. T. afterwards, and whilst the said commission continued and was in force, that is to say, on, &c. aforesaid, did, in obedience to such summons, appear before the said, &c. &c. the major part of the said commissioners in the said commission named at such meeting of the said, &c. the major part of the said commissioners in the said commission named at the Baptist Head Coffee House, Chancery Lane, in the, &c. to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said P. T. so then and there appearing at such last-mentioned meeting of the said, &c. the major part of the commissioners in the said commission named, on the said, &c. at the Baptist Head Coffee House, Chancery Lane, in the liberties of the Rolls aforesaid, in the county of Middlesex aforesaid, was then and there by the said, &c. the major part of the said commissioners named in due form of law sworn, and did then and there take his corporal oath upon the Holy Gospel of God, before the said, &c. &c. so being the major part of the said commissioners in the said commission named, that he the said

P. T. would true answer make to all questions asked of him under a commission of bankrupt awarded against T. S., and that he would speak the truth, the whole truth, and nothing but the truth (they the said, &c. the major part of the commissioners in the said commission named, then and there having sufficient power and authority to administer an oath to the said P. T. in that behalf.) And the jurors, &c. do further present, that the said P. T. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, did then and there knowingly, falsely, corruptly, wilfully, and wickedly say, depose, and give in evidence to the said, &c. (being the major part of the said commissioners and having such power to administer the said oath as aforesaid) that he (meaning the said P. T.) had had no sort of communication, correspondence, or intercourse whatever, directly or indirectly, with Mr. Shivers (meaning the said T. S. the bankrupt above mentioned) by letter, message, or otherwise, since he (meaning the said P. T.) answered a letter of his (meaning the said T. S.) in April or May last (meaning a certain letter which he the said P. T. had received from the said T. S. the bankrupt) in April or May last, (meaning the months of April or May in the year of our Lord 1800) nor did he (meaning the said P. T.) know where he (meaning the said T. S. the bankrupt above mentioned) was at that time (meaning that he the said P. T. did not know where the said T. S. was at the time when he the said P. T. answered the said letter received by him the said P. T. from the said T. S. the bankrupt, in the said months of April or May in the said year of our Lord 1800) nor had he (meaning, &c.) since heard of or seen him (meaning, &c.) to the best of his (meaning, &c.) recollection, (meaning, &c.) whereas in truth and in fact the said P. T. had communication with the said T. S. the bankrupt above named, after he the said P. T. had answered the said letter which he the said P. T. received from the said T. S. the bankrupt, in the months, &c. in the year, &c. and between that time and the time of his the said P. T.'s then examination on the said, &c. in the year, &c. And so the said P. T. then and there at the time of such his examination well knew. And whereas in truth, &c. [*in like manner negative the other assertions of the said Patrick Tonyn, and then proceed as follows.*] And so the jurors aforesaid, upon their oath aforesaid, do say that the said P. T. at the said Baptist Head Coffee House, Chancery Lane, in the liberty of the Rolls aforesaid, in the

county of Middlesex aforesaid, before the said, &c. being the major part of the commissioners in the said commission named, and then and there having sufficient power and authority to administer the said oath to the said Patrick Tonym, did, in manner and form aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others, and against the peace of our lord the king, his crown and dignity.

For perjury in an affidavit before a master in chancery, in support of a petition to the chancellor to supersede a commission of bankruptcy, on ground of fraud by bankrupt (a).

Middlesex. That heretofore, to wit, on, &c. a certain commission of bankrupt under the great seal of Great Britain, bearing date at W. the same day and year aforesaid, was duly awarded and issued against J. F. by the name and addition of J. F. late of, &c. horse-dealer and chapman, directed to certain commissioners therein named, who thereupon duly found and declared the said J. F. to be a bankrupt. And the jurors, &c. do further present, that afterwards, to wit, on, &c. a certain petition was presented to the right honorable the Lord High Chancellor of Great Britain, by and on the behalf of T. M., J. T., and T. L. shewing (amongst other things) that they the said petitioners had great reason to believe, that the said commission so issued against the said J. F. was issued for the express purpose of serving the said bankrupt, and to defraud them the said petitioners of their respective demands therein mentioned, and praying that the said Lord High Chancellor would be pleased to order the said commission of bankruptcy awarded and issued against the said J. F. to be superseded. And the jurors, &c. do further present, that D. J. late of, &c. contriving and intending to injure and aggrieve the said J. F. and to put him to great trouble, charges, and expence of his monies afterwards, that is to say, on, &c. at, &c. in, &c. came in his proper person before T. W. esq., then being one of the masters of the High Court of Chancery of our said lord the king, (the said court then and still being held at W. in the county of M. aforesaid,) and did then and there produce and exhibit to and before the said T. W. esq., a certain affidavit in writing of him the said D. J. in support of the said petition, and then and there before the said T. W. was duly sworn and took his corporal oath upon the holy gospel of God, concerning the truth of the matter contained in the said affidavit; (he the said

(a) See 4 Wentw. 258, and notes, ante, 302 to 318.

T. W. then and there having a lawful and competent authority to administer the said oath to the said D. J.) and the said D. J. being so sworn as aforesaid, not having, &c. and being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there, to wit, on, &c. at, &c. in, &c. in and by his affidavit aforesaid, upon his oath aforesaid, before the said T. W. then and there being one of the masters of the said court of Chancery, and having a lawful and competent authority to administer the said oath to the said D. J. falsely, corruptly, knowingly, wilfully, and maliciously deposed and swore as follows, that is to say; "In Chancery (meaning the said Court of Chancery) in the matter of J. F. a bankrupt, (meaning the said J. F.) D. J. of, &c. (meaning the said D. J.) maketh oath and saith, that, &c." [*set out the affidavit, with the necessary innuendoes,*] as by the said affidavit more fully appears; whereas in truth and in fact, the said J. R. in company with, &c. [*assign the perjury.*] And so the jurors aforesaid, upon their oath aforesaid, do say that the said D. J. on the said nineteenth day of December, in the twenty-ninth year aforesaid, at, &c. in, &c. before the said T. W. then being one of the masters of the Court of Chancery, and having such authority as aforesaid, by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did falsely, knowingly, wickedly, and maliciously commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

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Warwickshire. That heretofore, to wit, on, &c. a certain commission of bankruptcy under the great seal of Great Britain, bearing date at Westminster the same day and year aforesaid, founded on the several statutes made and then in force concerning bankrupts, was duly awarded and issued against J. C. and directed to certain commissioners therein named, and the said J. C. was thereupon duly found and declared to be a bankrupt. And the jurors, &c. do further present, that after the awarding and issuing of the said commission, to wit, on, &c. a

For perjury in an affidavit before a master extraordinary in chancery by a bankrupt, in order to supersede his commission (a).

(a) See 4 Wentw. 278, and to 318; and see a long precedent, and ante, 302 last precedent, and ante, 302 Cro. C. C. 8th edit. 315.

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certain petition was presented to the right honorable lord high chancellor of Great Britain, by and on behalf of the said J. C. setting forth and showing that, &c. [*here state petition, concluding as follows.*] And the said J. C. therefore humbly prayed the said lord high chancellor, that the said commission of bankruptcy might be superseded as having been improperly founded against the said J. C., and that the said J. C.'s estate and effects might be restored him by the assignee under such commission. And the jurors, &c. do further present, that the said J. C. contriving and wickedly and maliciously intending to injure and aggrieve the said R. S. and L. S. the petitioning creditors for the said commission; and to put them to great expence of their monies, and cause the said commission of bankruptcy to be superseded, heretofore, to wit, on, &c. at, &c. aforesaid, did come in his the said J. C.'s proper person before A. M. esquire, then and still being one of the masters extraordinary of his majesty's High Court of Chancery, and did then and there produce and exhibit to and before the said A. M. so being such master as aforesaid, a certain affidavit in writing of him the said J. C. in support of the said petition, and then and there before the said A. M. so being such master as aforesaid, was duly sworn and took his corporal oath upon the Holy Gospel of God, concerning the truth of the matters contained in the said affidavit, (the said A. M. then and there having a lawful and competent authority to administer the said oath to the said J. C. and to take and receive the said affidavit of the said J. C.,) and that the said J. C. being so sworn as aforesaid, not having, &c. and being moved and seduced, &c. and having no regard to the laws and statutes of this realm, nor fearing the punishments therein contained, did then and there, to wit, on, &c. at, &c. aforesaid, in and by his affidavit aforesaid, upon his oath aforesaid, before the said A. M. so being such master extraordinary as aforesaid, (the said A. M. having a lawful and competent authority to administer the said oath to the said J. C., and to take and receive his said affidavit) falsely, corruptly, knowingly, wilfully, and maliciously depose and swear as follows; that is to say, "In Chancery (meaning the said Court of Chancery,) in the matter of one J. C. a bankrupt, (meaning the said J. C.) J. C. of, &c. (meaning the said J. C.) maketh oath and saith, that, &c." [*here state the matter sworn,*] as by the said affidavit remaining in the said Court of Chancery at Westminster more fully appears; whereas in truth and in fact, the said J. C. before the awarding and issuing of the said

commission of bankruptcy had committed an act of bankruptcy; and whereas in truth and in fact, the said J. C. at the time of making such affidavit as aforesaid, well knew that he had committed an act of bankruptcy; and whereas in truth and in fact, the said J. C. at the time of awarding and issuing the said commission, was indebted to the said R. S. and L. S. who were the petitioning creditors for the same, in the sum of one hundred pounds and upwards. And so, &c. [*conclude as in last precedent.*]

City of Worcester, and county of the same city, to wit. That heretofore, to wit, on, &c. a certain commission of bankrupt, under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at W. the same day and year aforesaid, founded on the several statutes made, and then in force, concerning bankrupts, was duly issued against J. M. and W. M. directed to certain commissioners therein named, and the said J. M. and W. M. were thereupon duly found, and declared to be bankrupts. And the jurors, &c. do further present, that after the issuing of the said commission, to wit, on, &c. at, &c. a certain petition was prepared, in order to be presented, and which afterwards, to wit, on, &c. last aforesaid, was presented to the right honorable the Lord High Chancellor of Great Britain, by, and on the behalf of the said J. M. setting forth, and shewing, amongst other things, that on or about the eighteenth day of March then last, a joint commission of bankrupt (meaning the said commission,) was issued against the said W. M. and J. M. upon the petition of B. D., &c. as surviving partners of E. D. of, &c. ironmaster, deceased, under which the said J. M. and the said W. M. were declared bankrupts, that the said W. M. never was a partner with the said J. M. so interested with him; nominally or really in the property or profits of his said trade, or of any other trade whatsoever, that there was not any joint estate in which the said W. M. is, or ever was, interested with the said J. M. And the said J. M. therefore humbly prayed the said Lord High Chancellor, that the said joint commission might be superseded, and that a writ of supersedeas might forthwith issue

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Indictment for
similar offence
(a).

(a) This was the indictment now on the bench. See last against Matthews, settled A.D. last precedent, and Cro. C. C. 1814, by a very able crown 8th edit. 346. lawyer then at the bar, and

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for that purpose. And the jurors, &c. do further present, that the said J. M. contriving, and wickedly and maliciously intending to injure and aggrieve the said B. D., &c. as surviving partners as aforesaid, and to put them to great charge and expence of their monies, and to cause the said commission of bankrupt to be superseded, and to pervert the course of law and justice, heretofore, to wit, on, &c. at, &c. aforesaid, did come in his the said J. M.'s proper person, before R. B. gentleman, then and still being one of the masters extraordinary of his majesty's High Court of Chancery, and did then and there produce and exhibit to and before the said R. B. so being such master as aforesaid, a certain affidavit in writing of him the said J. M. of and concerning the said commission, and the trade of a furnishing ironmonger, to be exhibited and read, to and before the said Lord Chancellor, in support of the said petition, and then and there before the said R. B. so being such master as aforesaid, was duly sworn, and took his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit, the said R. B. then and there having a lawful and competent authority to administer the said oath to the said J. M. and to take and receive the said affidavit of the said J. M. (a); and that the said J. M. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and having no regard to the laws and statutes of this realm, nor fearing the penalties or punishment therein contained, did then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, in and by his affidavit aforesaid, on his oath aforesaid, before the said R. B. so being such master as aforesaid, (the said R. B. having a lawful and competent authority to administer the same oath to the said J. M. and to take and receive his said affidavit), falsely, corruptly, knowingly, wilfully, and maliciously depose and swear, amongst other things, in one part thereof, as follows, that is to say. And this deponent (meaning himself the said J. M.) further saith, that the said W. M. (meaning the said W. M.) never was a partner with him this deponent (meaning himself the said J. M.) or interested with him (meaning the said J. M.) nominally or really, in the property or profits of his (meaning the said J. M.'s) said trade, (meaning the trade of a furnishing ironmonger,) or of any other trade whatsoever, and in another part

thereof as follows, that is to say. And this deponent (meaning himself, the said J. M.) further saith, that there is not any joint estate in which the said W. M. (meaning the said W. M.) is, or ever was interested with him this deponent, (meaning the said J. M.) to the knowledge or belief of this deponent (meaning the said J. M.) Whereas in truth and in fact, the said W. M. before the awarding and issuing of the said commission of bankrupt, was a partner with the said J. M. in the trade of a furnishing ironmonger; and whereas in truth and in fact, the said W. M. before the awarding and issuing of the said commission, was really interested with him the said J. M. in the property and profits of his the said J. M.'s trade of a furnishing ironmonger. And whereas in truth and in fact, the said W. M. before the awarding and issuing of the said commission of bankruptcy, was nominally interested with the said J. M. in the property and profits of his the said J. M.'s said trade of a furnishing ironmonger. And whereas in truth and in fact, there was, before the awarding and issuing of the said commission, a joint estate in which the said W. M. was interested with the said J. M. as the said J. M. at the time of his so swearing as aforesaid, well knew. And so the jurors, &c. do say, that the said J. M. on the said, &c. aforesaid, at, &c. aforesaid, upon his oath aforesaid, before the said R. B. so being such master, and having such authority as aforesaid, by his own act and consent, and of his own most wicked and corrupt mind, falsely, wickedly, maliciously, wilfully, and corruptly, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

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Middlesex. That heretofore, to wit, on, &c. a certain commission of our said lord the king, pursuant to, and grounded on the several statutes then in force concerning bankrupts, was, under the great seal of Great Britain, in due manner, according to the form of the said statutes, awarded and issued out of the high court of Chancery of our said lord the king (b), the said court then being held at, &c. against one J. H. directed to

For perjury in an affidavit made before the chancellor, to induce him to refuse allowance of bankrupt's certificate, on the ground of gaming (a).

(a) This was the indictment against George Wintle, A. D. 1800, who was convicted; from the MS. of an eminent crown lawyer at the bar, see prece-

dents, ante, 402 to 416, and notes, ante, 302 to 318.

(b) This allegation is improper, see 3 Campb. 58.

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certain commissioners therein named, under which said commission of bankrupt, he the said J. H. was found and declared to be a bankrupt, according to the form of the statutes in such case made and provided, and such proceedings were thereupon had upon the said commission of bankrupt, that a certificate of the said J. H. having made a full discovery of his estate and effects, and in all things duly conformed himself, according to the directions of an act of parliament made and passed in the fifth year of the reign of our late sovereign George the Second (a), intituled, "An act to prevent the committing of frauds by bankrupts," had been and was obtained by him the said J. H. and signed and sealed by the major part of the commissioners in the said commission named, and had been, and was laid before the right honorable Lord L. then lord high chancellor of Great Britain, for his allowance thereof. And the jurors, &c. do further present, that G. W. late of, &c. being an evil-disposed person, and well knowing the premises aforesaid, and unlawfully and wickedly devising, contriving, and intending to injure, oppress, and aggrieve the said J. H. and wilfully and maliciously, as much as in him lay, to prevent and hinder the allowance of the said certificate of the said J. H. so by him obtained as aforesaid, by the said lord chancellor, afterwards, and whilst the said certificate lay for the allowance of the said lord high chancellor, to wit, on, &c. at, &c. aforesaid, in his own proper person came before N. S. esquire then being one of the masters of the said high court of Chancery, and was then and there duly sworn, and did take his corporal oath upon the holy gospel of God, before the said N. S. (he the said N. S. being such master as aforesaid, and then and there having competent authority to administer an oath to the said G. W. in that behalf,) and the said G. W. being so sworn, and not having, &c. but being moved and seduced, &c. then and there, to wit, on the said, &c. at, &c. aforesaid, before the said N. S. on his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit in writing, in substance and to the effect following, that is to say, that he knew J. H. the bankrupt above named, and that on, &c. then last, one Mr. J. M. and the said J. H. called at the dwelling-house of the said G. W. situate, &c. and were shown into the said

(a) Now repealed by, and the only act in force, is the 6 Geo. 4. c. 66.

G. W.'s parlour (wherein was also another gentleman, customer to the said G. W.) and the said J. M. came for the purpose of buying some silver spoons of the said G. W. and that soon after the said J. M. and J. H. were seated, the said J. H. observed to the said J. M. that as there was a pack of cards, (pointing to a pack of cards then lying in the room) that he the said J. H. would play with the said J. M. for the sum of one guinea for a supper to be had on that evening, which challenge the said J. M. accepted, and that they the said J. H. and J. M. did play at the game of putt for the same, which the said J. M. won; and that the said J. H. and the said J. M. afterwards, on the said, &c. played at the game of putt aforesaid, at the house of the said G. W. for the sum of five guineas each game, and that the said J. M. did then and there win of the said J. H. two games, and received the sum of ten guineas, of him the said J. H. as the loser of the said two games, whereas in truth and in fact the said G. W. did not know the said J. H. and whereas in truth and in fact the said J. H. did not call at the dwelling-house of the said G. W. in, &c. aforesaid, in the said, &c. and whereas in truth and in fact the said J. H. did not play at cards with the said J. M. for a guinea for a supper, on the said, &c. at the said dwelling-house of the said G. W. and whereas in truth and in fact the said J. H. and the said J. M. did not on the said, &c. play at the game of putt, at the house of the said G. W. for the sum of five guineas each game, neither did the said J. M. then and there win of the said J. H. two games, and receive the sum of ten guineas of him the said J. H. as the loser of the said two games; and whereas in truth and in fact the said J. H. did not play at any game, or lose any money at the house of the said G. W. on the said, &c. and whereas in truth and in fact the said J. H. did not play with the said J. M. or with any other person at the game of putt, or any game, any sum whatever, nor did the said J. M. receive the sum of ten guineas or any other sum of him the said J. H. as the loser of any game or games, or of any other account whatsoever, on the said, &c. at the said house of the said G. W. and whereas in truth and in fact the said J. H. was not at the dwelling-house of the said G. W. in, &c. aforesaid, on the said, &c. And so, &c. [*as ante*, 416.]

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IN PROCEEDINGS RELATIVE TO ELECTIONS.

For perjury before a committee of the house of commons concerning bribery, and treating at the Cricklade election (a).

Middlesex. That the borough of Cricklade, in the county of W. is an ancient borough, and for a long space of time two burgesses of the same borough have been elected and sent, and have been used and accustomed, and of right ought, to be elected and sent to serve as burgesses for the same borough, in the parliament of this kingdom, to wit, at the borough of C. in the county of W., and that on, &c. an election of an apt and discreet burgess of the said borough, to serve as a burgess for the aforesaid borough of C. in the place of W. E. esquire, then deceased, in the then parliament of our said lord the now king, came on, to wit, at the borough of C. in, &c. and thereupon one S. P. esquire, and one J. D. esq. were returned to serve in the said parliament for the said borough of C. And the jurors, &c. further present, that afterwards, to wit, on, &c. the said J. D. did present a certain petition in writing to the lower house of parliament of our said lord the king, then held at W. aforesaid, to wit, in the parish of St. M. W. in the county of M. directed to the honorable the commons of Great Britain in parliament assembled, thereby setting forth, among other things, that at the late election of a burgess to serve in parliament for the said borough of C. in the room of the said W. E. esquire, de-

(a) See 4 Wentw. 300. See 10 Geo. 3. c. 16. s. 8. 2 Camp. 134. 6 East, 323. 2 Smith, 526. Cowp. 726. If the precept to hold the election be stated, which seems to be made unnecessary by the statute, a variance between the name of the place in the indictment and precept will not be material; but when it is subsequently stated that the candidates were returned to serve for the borough, if the name vary from the indenture, the indictment will be defective, 2 Campb. 139, where see a similar precedent, which was held bad on the last ground. It states that the matters on which the perjury was assigned were material; and this seems to be proper on such an

occasion. See form of indictment for perjury of a voter at an election, 2 Smith Rep. 526. 6 East, 323. In a late case, where an information for perjury committed before a select committee of the House of Commons, appointed to try and determine the merits of an election, averred, that the committee was appointed for that purpose, and that the committee were sworn "to try the matter of the petition, &c." it was held that the situation of the committee was well described to support the averment, though described in the 10 Geo. 3. c. 16. s. 13, as a select committee "to try and determine the merits of the return or election." 1 D. & R. Rep. 11.

ceased; S. P. esquire, and the petitioner were candidates, and that at the said election which came on, &c. before T. C. bailiff and returning officer for the said borough, a great majority of legal votes was given for the petitioner, who ought to have been returned accordingly, but the said returning officer, notwithstanding such majority, had returned the said S. P. and the petitioner, instead of the petitioner alone, to the great injury of the petitioners, and in violation of the rights of the electors of the said borough; and such petitioner, therefore, prayed that the said return might be amended, by erasing the name of the said S. P. therefrom, and that the said petitioner only might be declared duly elected, or have such other relief as the house should think meet. And the jurors, &c. do further present, that afterwards, to wit, on, &c. the said S. P. esquire, did present a certain petition in writing to the lower house of parliament of our said lord the king, then held at W. in the county of M. to wit, in the parish of St. Margaret, Westminster, in the county of M. directed to the honorable the commons of Great Britain, in parliament assembled, thereby setting forth, among other things, that at the late election of a Burgess to represent the borough of C. in the county of W. in parliament, in the room of W. E. esq. deceased, the said S. P. the petitioner, and J. D. esq. were candidates; that the said election came on about eleven of the clock in the forenoon of, &c. then last past, and the returning officer proceeded to take the poll in the church, as the most convenient place for that purpose, and continued the poll till four of the clock of the afternoon of the same day, when only forty-one out of near two thousand persons, having a right to vote, had given their suffrages; that the poll being adjourned to the same place, and at the hour of nine on the next morning, the petitioner, with his counsel, agents, and a very numerous body of electors, who meant to vote for the petitioner, appeared at the church porch, pursuant to the said adjournment; that as the returning officer and the candidates, together with the electors, were entering the church, in order to proceed to the place of polling, a riot commenced, which obliged the returning officer immediately to close the poll, and on that account he returned the said J. D. and the petitioner to represent the said borough in the room of the said W. E.; and that the petitioner, by reason thereof, was prevented from receiving the suffrages of a large majority of the electors for the said borough, and of obtaining a legal right to represent the said borough for the remainder of the then

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present parliament; that from the time of the decease of the said W. E. unto the close of the poll, the town of C. by means of the feasts and entertainments daily and constantly given by and at the expence of the said J. D. or his agents, to the electors of the said borough, in order to procure their votes for the said J. D. was kept in continual riot, tumult, idleness, and dissipation, to the great injury of the inhabitants of the said borough, whereby the morals of the said people were corrupted, and the public peace much disturbed; and that by the above and other undue means made use of by the said J. D. or his agents, and by the conduct of the returning officer, the sense of the electors at large had not been taken, and the petitioner was thereby much aggrieved, and therefore praying the house to take the premises into consideration, and grant such relief therein as to the house should, upon examination, appear to be just; and such proceedings were thereupon had in the said lower house of parliament; that afterwards, to wit, on, &c. in the said lower house of parliament, to wit, in the said parish of, &c. G. G. esq. &c. (several others) then being members of the said lower house of parliament, were in due manner, according to the statutes in such case made and provided, chosen, nominated, and sworn, to be a select committee to try and determine the merits of the said election of the said S. P. (a); and the said J. D. so returned to serve in the said parliament as a burgess for the borough of C. And the jurors, &c. do further present, that the said, &c. so chosen, nominated, and sworn as aforesaid, afterwards, to wit, on the said, &c. at a certain place adjacent to the house of commons, the second committee chamber, situate in the parish of, &c. did in due manner meet to try and determine the matters of the said petition of the said S. P. and the said J. D. so returned to serve in the said parliament of the said borough of C. And the jurors aforesaid, upon their oath aforesaid, do further present, that J. H. late of, &c. afterwards, that is to say, on, &c. at the said, &c. did appear as a witness touching the matters of the said petition before the said select committee (the said select committee being then and there met to try and determine the matters of the said election); and the said J. H. was then and there duly sworn, and did take his corporal oath upon the holy gospel of God, before the select committee aforesaid, to

(a) See ante, 418, note (a).

speak the truth, the whole truth, and nothing but the truth, of
and concerning the aforesaid premises (the select committee
aforesaid, then and there having competent and sufficient power
and authority to administer the said oath to the said J. H. in
that behalf); and the said J. H. being so sworn as aforesaid,
and not having, &c. but being moved and seduced, &c. and
not regarding the laws of this realm, nor the pains and pe-
nalties therein contained, but minding and intending to per-
vert the due course of election of members to serve in
parliament, and to subvert the constitution of this realm, on
the said, &c. at, &c. aforesaid, on his oath aforesaid, falsely,
wickedly, maliciously, wilfully, and corruptly did say, depose,
swear, and give in evidence to the select committee aforesaid,
touching the matters of the said election in substance and
effect as followeth, that is to say, that there was not a farthing
or any money paid to him, the said J. H. on account of
Mr. D.'s and Mr. P.'s election (meaning the aforesaid election
for the borough of C.) that he could not say how much was
due to him the said J. H. on that account, that, &c. [*here state
other matter sworn.*] Whereas, in truth and in fact, there was
money paid to him the said J. H. on account of the aforesaid
election, for the borough of C. in the said county of W., and
whereas, in truth and in fact, he, the said J. H. could say how
much was due to him, the said J. H. on that account, and
whereas, in truth and in fact, &c. [*here assign perjury on the
other matter sworn.*] And so the jurors aforesaid, upon their
oath aforesaid, do say that the said J. H. on the said, &c.
at, &c. aforesaid, before the committee aforesaid, then and
there having competent power and authority to administer the
aforesaid oath to the J. H. in that behalf, by his own act and
consent, in manner and form aforesaid, upon his oath aforesaid,
falsely, wickedly, wilfully, maliciously, and corruptly did com-
mit wilful and corrupt perjury, to the great displeasure of Al-
mighty God, to the evil example of all others, against the form
of the statute in such case made and provided, and against the
peace of our said lord the king, his crown and dignity.

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IN PROCEEDINGS IN ECCLESIASTICAL COURTS.

For perjury in a
cause in the ec-
clesiastical court
for defamation
(a).

That before the day of taking this inquisition, to wit, on, &c. at, &c. R. S. wife of F. S. late of, &c. not having, &c. but being moved and seduced, &c. and contriving and maliciously intending to injure one R. G. and to avert truth itself, came in her own proper person before J. C. then surrogate of the dean and chapter of B. and did then and there, that is to say, on, &c. aforesaid, at the said, &c. as a witness in a certain cause or suit, to wit, a cause of defamation then depending in the episcopal court of B. between one A. J. by the name of, &c. against the aforesaid R. G. by the name of, &c. take her corporal oath upon the Holy Gospel of God, before the said J. C. (the said J. C. then and there having full power and authority to administer an oath to the said R. S. in that behalf), and then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, by her own act and consent, upon her said oath before the said J. C. (the said J. C. then and there having such power and authority to administer the said oath to the said R. S. as aforesaid), falsely, wilfully, maliciously, and corruptly did say, repeat, depose, swear, and make deposition in writing, intituled as followeth, to wit, "In the Episcopal Court of B. A. J. of, &c. against R. G. of, &c. in a cause of defamation, on depositions on the libel, and containing therein, amongst other things, as follows, that is to say, to the second article of the said libel (meaning a certain libel or articles of complaint (b), which had been exhibited by the aforesaid A. J. against the aforesaid R. G., in and to the aforesaid episcopal court of B. in the aforesaid cause or suit of defamation, and in the second article whereof, the said A. J. had charged and accused the said R. G. with calling her a whore, and otherwise defaming her), this deponent (meaning herself the said R. S.) saith, that, &c. [*here state the matter sworn, with proper innuendoes*], as by the said deposition (reference being thereto had), will, amongst other things, fully appear; whereas, in truth and in fact, the said R. S. was not present, &c. [*assign the perjury as in 4 Wentw. 299, and according to the facts.*] And so the aforesaid jurors, on their aforesaid oath, do say, that the aforesaid R. S. on the said, &c. at, &c. aforesaid, before the aforesaid J. C. (then and there having full power and authority

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(a) See 4 Wentw. 297.

stated before, by way of in-

(b) This should have been ducement.

to administer the aforesaid oath to the said R. S. in the respect aforesaid), by, of, and through her own act and consent, in manner and form aforesaid, upon her aforesaid oath, did falsely, maliciously, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of the laws of this realm, to the wicked and evil example of all others, to the subversion of public justice and good government of this kingdom, to the great damage of the aforesaid R. G. and against the peace of our lord the now king, his crown, and dignity.

That A. the wife of J. T. late of, &c. on, &c. at, &c. in her own proper person, came before J. N. then and still being surrogate in the archdeaconry court of the diocese of E. in due manner constituted and appointed (b); and was then and there produced as a witness, and sworn and examined on the part and behalf of one S. M. the promovent or plaintiff in a certain action or suit before that time instituted, for defamation in the aforesaid court, and then depending in the said court, in which said action or suit the said S. M. was promovent or plaintiff, and one H. C. by the name and description of, &c. defendant (c), and the said A. T. was then and there, before the said J. N. surrogate as aforesaid, sworn, touching and concerning the several matters contained in a certain libel before then exhibited in the aforesaid action or suit; and the said A. did then and there take her corporal oath upon the Holy Gospel of God, before the said J. N. being such surrogate as aforesaid, to speak the truth touching and concerning the several matters in the said libel contained, he the said J. N. surrogate as aforesaid, then and there having competent and sufficient authority to administer the said oath to the said A. T.; and the said A. T. being so sworn as aforesaid, and being a person of corrupt and wicked mind and disposition, and wilfully and maliciously devising, contriving, and intending to draw down the censures of the said ecclesiastical court upon the said H. C., and to cause him to be excommunicated, and to be put to great costs and charges, and to cause him to suffer the other

Indictment for perjury in depositions in the ecclesiastical court, in a suit there depending for defamation (a).

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(a) See 4 Wentw. 235. Stark. ante, 307.

(b) The allegation as to the officer's having been duly appointed, may be omitted. See (c) This allegation of name and description may be omitted.

pains and penalties by the said court inflicted on persons guilty of defamation, and not having, &c. but being moved and seduced, &c. then and there, to wit, on the said, &c. at, &c. aforesaid, before the said J. N. so being surrogate as aforesaid, and so having competent and sufficient authority to administer the said oath to the said A. T.; upon her said oath, did falsely, knowingly, wilfully, wickedly, maliciously, and corruptly, by her own act and consent, and of her own most wicked, corrupt, and malicious mind and disposition, depose, repeat, and acknowledge, that, &c. [*state matter sworn, with innuendoes, 4 Wentw. 235,*] whereas in truth and in fact, he the said H. C. did not, in the months of May or June, 1786, or at any other time or times, say, that he the said H. C. had kept S. M. common for these seven years, nor that she the said S. M. had given the said H. C. the bad disorder, and three or four gentlemen more of his acquaintance, nor that he had found her all the clothes to her back, and that the said J. S. rode her about continually, nor any other defamation whatsoever of the said S. M.; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. on the said, &c. at, &c. aforesaid, before the said J. N. surrogate as aforesaid, and then and there having competent and sufficient authority to administer the said oath to the said A., by her own act and consent, and of her own most wicked and corrupt mind and disposition, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all others, and against the peace of our said lord the now king, his crown and dignity. And the jurors, &c. do further present, that the said A. T. afterwards, to wit, on, &c. at, &c. aforesaid, in her own proper person came before J. N. surrogate as aforesaid, and was then and there produced again as a witness, and sworn and examined on the part and behalf of the said S. M. the promovent or plaintiff in the said action or suit, instituted by the said S. M. for defamation in the aforesaid court, and then depending in the said court, in which said action or suit the said S. M. was promovent or plaintiff, and the said H. C. was defendant; and the said A. T. was then and there before the said J. N. surrogate as aforesaid, sworn to speak the truth respecting divers interrogatories to her the said A. T. then and there administered by the said J. N. surrogate as aforesaid; and that the said A. T. did then and there take her corporal oath upon the holy gospel of God, touching and concerning the truth of the

Second count,
upon answers to
interrogations in
the same cause.

several interrogatories to her the said A. T. in form aforesaid, administered by the said J. N. surrogate as aforesaid, he the said J. N. surrogate as aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said A. T., and that the said A. T. being so sworn as aforesaid, and being a person of a wicked and corrupt mind and disposition, and wilfully and maliciously contriving, devising, designing, and intending to draw down the censures of the said ecclesiastical court upon the said H. C., and to cause him to be excommunicated, and to be put to great costs and charges, and to cause him to suffer other the pains and penalties by the said court inflicted on persons guilty of defamation, and not having, &c. but being moved and seduced, &c. then and there, to wit, on, &c. last aforesaid, at, &c. aforesaid, before the said J. N. so being surrogate as aforesaid, and so having competent and sufficient authority to administer the said oath to the said A. T. to the said several interrogatories so being administered to her as aforesaid, did, upon her oath aforesaid, again depose, repeat, and acknowledge, amongst other things, in manner following, that is to say, to the second interrogatory, she the said A. T. answered, that, &c. [*here state the matter sworn, with innuendoes,*] whereas in truth and in fact, it was not light enough for the said A. T. at her lodging-room window, nor was she near enough to distinguish that it was the said H. C. who spoke the said defamatory words; and whereas in truth and in fact, &c. [*set forth assignments of perjury, and conclude as in first count.*]

INDICTMENTS FOR PERJURY IN CIVIL PROCEEDINGS, RELATIVE TO ARBITRATIONS.

London, That before the day of taking this inquisition divers disputes and differences had arisen, and were depending between A. B. and C. D. assignees of the estates and effects of R. E. late of, &c. a bankrupt, according to the force, form, and effect of the several statutes concerning bankrupts, of the one part, and E. F. and G. H. assignees of the estate and effects of W. S. a bankrupt, according to the form and effect

For perjury before arbitrators, by a Quaker on his affirmation (a)

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(a) Sec 4 Wentw. 256; see next note.

of the several statutes aforesaid, of the other part, and thereupon for putting an end to the said disputes and differences, as well the said A. B. and C. D. as the said E. F. and G. H. assignees as aforesaid, heretofore, to wit, on, &c. respectively submitted themselves to the award, order, arbitrament, final end, and determination of A. C. and T. C. arbitrators indifferently named, elected, and chosen as well on the part and behalf of the said A. B. and C. D. as of the said E. F. and G. H. assignees as aforesaid, to arbitrate, award, order, adjudge and determine of and concerning the said disputes and differences, so as the said award should be made in writing ready to be delivered to the parties in difference, or such of them as should require the same on or before, &c. then next ensuing, and it was then and there agreed by and between the said parties, in difference that R. E. (being one of the people called Quakers) should be examined by and before the said arbitrators touching and concerning the said matters in difference, upon his solemn affirmation, to be taken before some one of his majesty's justices of the Court of King's Bench or Common Pleas, or some one of the barons of his majesty's Court of Exchequer, according to the form of the statute in such case made and provided. And the jurors, &c. do further present, that afterwards, to wit, on, &c. at, &c. the said R. E. in pursuance of the said agreement came in his proper person (then and still being one of the people called Quakers) before, &c. (he the said, &c. then and there having competent, &c.) (a) and was then and there duly affirmed according to the form of the statute in such case made and provided, and upon such affirmation he the said R. E. (so being one of the people called Quakers as aforesaid) did then and there solemnly affirm and declare (b) that the evidence he should give to the said arbitrators touching and concerning the said matters in difference, should be the truth, the whole truth, and nothing but the truth, (the said G. H. then and there having full power and authority to administer the said affirmation to the said R. E. in that behalf.) And the jurors, &c. do further present, that afterwards, to wit, on, &c. at, &c. the said arbitrators met and took upon themselves the burthen of the said arbitration, and that upon the said arbitration certain questions then and there arose, and

(a) The precedent in 4Went. ing a proper indictment.

256, seems incorrect, it is here given merely to assist in fram-

(b) Not stated as it should be, before whom.

it became and was then and there material and necessary for the said arbitrators to know and ascertain whether the said R. E. had actually paid to the said W. S. for or on account of a certain ship or vessel called the Amazon, tradesmen's bills to the amount of eight thousand four hundred pounds and upwards, and in particular whether he the said R. E. had paid him the said W. S. eleven guineas per ton for the hull of the said ship or vessel, and also whether the said W. S. had paid the said R. E. six thousand and seven hundred pounds and upwards in cash and bills on account of the said sum of eight thousand four hundred pounds and upwards, and also whether there was a balance then due from the estate of the said W. S. to the estate of the said R. E. of one thousand seven hundred pounds and upwards, and also whether if the said R. E. had been paid the balance of seven hundred pounds and upwards, he would have gained or lost by the whole transaction between them relative to the ship or vessel. And the said R. E. then and there appeared and was interrogated and examined upon his aforesaid affirmation by and before the said arbitrators as to such facts and circumstances. And the jurors, &c. do further present, that the said R. E. being so affirmed, not having, &c. but being moved and seduced, &c. and in no wise regarding the laws of this realm, or fearing the penalties therein contained, then and there, to wit, on, &c. at, &c. upon the said affirmation by his own act and consent, and upon his aforesaid affirmation before the said arbitrators, (they the said arbitrators then and there having such power and authority to administer the said affirmation to the said R. E. in that behalf,) (a) did wilfully, falsely, and corruptly affirm, declare, and give in evidence (amongst other things) to the said arbitrators, that he the said R. E. had actually paid for the said ship or vessel called the Amazon, tradesmen's bills to the amount of eight thousand four hundred guineas and upwards, in particular, that he the said R. E. had paid for him the said W. S. eleven guineas per ton for the hull of the said ship or vessel, and also that, &c. [*here state the matter sworn, and assign the perjury as usual;*] and whereas in truth and in fact, &c. and so the jurors aforesaid, upon their oath aforesaid, do further present, that the said R. E. (so being one of the people called Quakers as aforesaid) on, &c. at, &c. before the said G. H. (he the said G. H. then and there having full power and authority to administer the

(a) This seems defective.

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said affirmation to the said R. E. in that behalf,) by his own act and consent did wilfully, falsely, and corruptly affirm and declare in manner and form aforesaid, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

For perjury in an affidavit in the C. P. on showing cause against a rule nisi for setting aside an award (*a*).

Middlesex. That heretofore (that is to say) at the sitting at nisi prius, holden after Easter term, in, &c. at Guildhall, in the city of L. according to the form of the statute in such case made and provided, before the right honorable R. P., lord A., chief justice of the court of our lord the king of the bench at W. certain issues duly joined in the said court of our said lord the king of the bench at W. aforesaid, between one J. C. and J. B. in a certain plea of trespass on the case in which the said J. P. was plaintiff, and the said J. B. was defendant, came on to be tried in due form of law, and thereupon by consent of all parties, their counsel and attornies, an order or rule of court was then made amongst other things, in substance and to the effect following, (that is to say) that the said cause be referred to the award, order, arbitrament, and final end and determination of W. M. and W. T. or of such person as they should, by writing under their hands, nominate and appoint an umpire, to whom all matters in difference between the said parties were referred, so as the said arbitrators did and should make and duly publish their or his award or umpirage in writing, of and concerning the matters referred, ready to be delivered to the said parties, or to either of them requiring the same, on or before the 28th day of June ensuing the date of that order, and by the same consent it was also ordered, that the said arbitrators or their umpire should and might be at liberty, if they or he should think fit to examine the parties to the said suit upon oath, and for that purpose the said parties, and also the witnesses to be examined before the said arbitrators or their umpire, touching the matters referred, might be sworn before the right honorable the lord chief justice, or some other judge of that court, and that the said parties did and should produce before the said arbitrators or their umpire, all books, deeds,

(*a*) This was the indictment 1802, from the MS. of an eminent crown lawyer at the bar.

papers, and writings whatsoever, in their or either of their custody and power, relating to the matters in difference; and by the same consent it was also ordered that the costs of the said suit, to be taxed by one of the prothonotaries of that court, should abide the event of the said award, so to be made and published as aforesaid, and that the costs of the reference should be in the discretion of the said arbitrators or their umpire. And by the like consent it was likewise ordered that the said parties did and should, on their respective parts, in all things stand to, obey, and abide by, perform and fulfil, and keep the award, order, arbitrament, final end and determination of the said arbitrators or their umpire. And that neither of the said parties did or should bring or present, or cause to be brought or presented, any suit in equity, against the said arbitrators or their umpire, or against each other. And lastly it was ordered, that either of the said parties should be at liberty to move the said court of Common Pleas, that that order might be made a rule of the said court, if the said court should so please. And the jurors, &c. do further present, that the said W. M. called W. M. and the said W. T. did not make any award of or concerning the matters, by the said order or rule referred to them as aforesaid, and that they the said W. M. otherwise called W. M. and the said W. T. did afterwards, and before the 28th day of June, in the said order or rule mentioned, duly nominate and appoint one R. S. of, &c. currier, as and to be umpire in the premises, in pursuance of the said order or rule in that behalf so made as aforesaid, to whom all matters in difference between the said J. C. and the said J. B. were accordingly referred. And the jurors, &c. do further present, that afterwards and before the said 28th day of June in the said order or rule mentioned (to wit) on, &c. (to wit) at, &c. aforesaid, the said R. S. made his certain award, of and concerning the matters so to him referred as aforesaid, bearing date, &c. last aforesaid, and thereby, after reciting as therein is recited, did, amongst other things, award, arbitrate, and determine that the said J. B. his executors or administrators, should well and truly pay, or cause to be paid to the said J. C. his executors or administrators, on, &c. between the hours of one and three of the clock in the forenoon of the same day, at, &c. the sum of £500 as damages sustained by the said J. C. by means and on occasion of speaking and publishing the said words in the said declaration mentioned (meaning in the declaration of the said J. C.) against the said J. C. in the said cause, which so came on to

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Award.

Application to set aside award. be tried as aforesaid (a). And the jurors, &c. that afterwards, (that is to say) on, &c. the said J. B. made a certain application to the said court of our lord the king of the bench at, &c. for a rule of the said court to call on the said J. C. to shew cause to that court why the award made in that cause should not be set aside, and proceedings upon it be stayed; and upon that occasion he the said J. B. upon the affidavits of one W. M. one J. R. one M. W. and himself the said J. B. being read by the said court of our said lord the king of the bench, obtained a rule of the said court of our said lord the king of the bench, against the said J. C. whereby it was ordered that the plaintiff upon notice of that rule to be given to him or his attorney, should shew cause to that court on Friday then next ensuing, why the award made in that cause, should not be set aside, and proceedings upon it stayed. And the jurors, &c. further present, that the said affidavit of the said J. R. contained (amongst other things) that he (meaning himself the said J. R.) was with the defendant (meaning the said J. B.) at the Mitre Tavern, at Mitre Court, in Aldgate, on, &c. that he (meaning himself the said J. R.) heard the said Mr. W. M. (meaning the said W. M.) in the said first mentioned order or rule mentioned, say to the defendant (meaning the said J. B.) that he (meaning the said W. M.) had seen plaintiff (meaning the said J. C.) and that the plaintiff (meaning the said J. C.) much wished the cause (meaning the said cause which so came on to be tried as aforesaid, and wherein the said J. C. was plaintiff, and the said J. B. was defendant) to be settled without its (meaning the said cause) going to court and provided it (meaning the said cause) went to arbitration, he (meaning the said J. C. the said plaintiff) did not want any money to be awarded to him by way of damages in the said cause, which so came on to be tried as aforesaid. And the said affidavit of the said J. R. further contained (amongst other things) that he (meaning himself the said J. R.) attended Guildhall in the city of L. on the day appointed for the trial of this cause (meaning the said cause that so came on to be tried as aforesaid) and was present at the conversation that took place between Mr. M. (meaning the said W. M. in the said first order or rule mentioned) Mr. M. (meaning the said W. M.) and the defendant (meaning the said J. B.) and that Mr. M. (meaning the said

(a) *Quære* as to statement that submission was made a rule of court.

W. M. in the said first mentioned order or rule mentioned,) stated it was the wish of both Mr. C. (meaning the said J. C. the said plaintiff,) and his friend Mr. T. (meaning the said W. T. in the said first mentioned order or rule mentioned) that the cause (meaning the said cause which so came on to be tried as aforesaid) should go to arbitration, and that Mr. M. (again meaning the said W. M.) suggested the impropriety of such a cause being left to arbitration, and observed to the defendant (meaning the said J. B.) that it was possible the arbitrators might be disposed to award some small damages to which Mr. M. (meaning the said W. M. otherwise called W. M. in the said first mentioned order or rule mentioned) immediately replied that damages were out of the question, that costs were the only thing that the arbitrators would have to decide. And the jurors, &c. do further present, that the affidavit of the said M. W. contained (amongst other things) that he (meaning himself the said M. W.) was with the defendant (meaning the said J. B.) on Friday, the 11th day of this instant June (meaning June now last past,) at the Mitre, in Mitre court, Aldgate, that he (again meaning himself the said M. W.) then saw Mr. M. (meaning the said W. M. in the said first order or rule mentioned) and that Mr. M. (again meaning the said W. M.) said to the defendant (meaning the said J. B.) he (meaning himself the said W. M. in the said first order or rule mentioned) had again seen the plaintiff, (meaning the said J. C.) who (again meaning the said J. C.) was desirous of the cause (meaning the said cause which so came on to be tried as aforesaid, and wherein the said J. C. was plaintiff, and the said J. B. was defendant) being settled without going into court, and that if it (meaning the said cause) went to arbitration, no money was expected, (meaning that the said J. C. did not expect any money to be awarded to him by way of damages in the said cause.) And the jurors, &c. do further present, that the said W. M. (in the said first mentioned order or rule mentioned) contriving and intending to stop the course of public justice, on, &c. did come in his own proper person into the court of our said lord the king of the Bench, at, &c. and did then and there produce to the said court, a certain affidavit in writing of him the said W. M. to be exhibited to the said court for the purpose of discharging the said last-mentioned rule, and then and there before the court was duly sworn, and took his corporal oath upon the holy gospel of God, that the said affidavit of him the said W. M. were true (the said court then and there having a lawful, due,

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and competent authority to administer the said oath to him the said W. M. and to take and receive the said affidavit of the said W. M.) and that the said W. M. otherwise called W. M. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and not having regard to the laws and statutes of this realm, nor fearing the pains and penalties therein contained, did then and there, (to wit) on, &c. at, &c. aforesaid, in and by his affidavit aforesaid, upon his oath aforesaid, before the said court (the said court then and there having a lawful, due, and competent authority to administer the said oath to him the said W. M. and to receive his said affidavit) wickedly, falsely, knowingly, wilfully, and corruptly depose and swear (amongst other things) in substance and to the effect following (that is to say) he (meaning himself the said W. M.) denies that any conversation ever passed between him (meaning himself the said W. M.) and the defendant (meaning the said J. B.) in the presence of the deponents J. R. (meaning the said J. R. who so made his affidavit as aforesaid) and M. W. (meaning the said M. W. who so made his affidavit as aforesaid) on the contrary, the said deponent White (meaning the said M. W. who so made his affidavit as aforesaid) was not in the room when any conversation passed (meaning when any conversation passed between the said W. M. and the said J. B. the said defendant, relative to referring the matters in difference between the said J. C. and J. B. to arbitration,) whereas in truth and in fact the said M. W. who so made his affidavit as aforesaid, was in the room when a conversation passed between the said W. M. and the said J. B. the said defendant, relative to referring the matters in difference between the said J. C. and the said J. B. to arbitration. And the jurors, &c. do further present, that the said W. M. upon his oath aforesaid, in and by his affidavit aforesaid, did falsely, corruptly, knowingly and wickedly further depose and swear (amongst other things) in substance and to the effect following (that is to say) that whatever conversation passed between him (meaning himself the said W. M.) and the defendant, (meaning the said J. B.) respecting the reference, (meaning the referring the matters in difference between the said J. C. and J. B. &c.) arbitration was not, as stated by the said defendants (meaning the said J. R. and the said M. W.) in their affidavit (meaning the said affidavit of them the said J. R. and M. W. above-mentioned,) whereas in truth and in fact, what conversation passed between the said

W.M. and the said J. B. the defendant, respecting the reference of the matters in difference between the said J. C. and the said J. B. to arbitration, was, as stated by the said J. R. and the said M.W. in their affidavit above mentioned. And so the jurors aforesaid, upon their oath aforesaid, do say that the said W.M. otherwise called W. M. on the said third day of July, in the forty-second year of the reign aforesaid, at W. aforesaid, in the said county of M. before the said court, then and there having a competent, due, and lawful authority to administer the said oath to him the said W. M. otherwise called W. M. by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did falsely, wickedly, and corruptly, upon his oath aforesaid, so taken as aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, and in contempt of our said lord the king and his laws, to the evil example of all others, and against the peace of our said sovereign lord the king, his crown and dignity.

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INDICTMENTS FOR PERJURY, IN PENAL
ACTIONS AND CRIMINAL CASES, ON
SUMMARY PROCEEDINGS.

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Middlesex. That heretofore, to wit, on, &c. at the Public Office, Worship Street, in the parish of St. Leonard, Shoreditch, in the county of Middlesex, a certain information, which had been and was in due manner exhibited, and made to and before J. G. then being one of the justices of our said lord the king assigned, &c. [*as ante*, 182,] whereby one C. D. of, &c. baker, was charged with having on, &c. at, &c. unlawfully exposed to sale certain bread, to wit, 40 loaves of bread, made of the flour of wheat, the said bread and loaves of bread not having been baked 24 hours at the least, at the time of such exposing of the said loaves of bread to sale, contrary to the form of the statute in such case made and provided, came on to be heard and determined, and was then and there heard and determined accordingly, before the said J. G. so being such justice as aforesaid. And the jurors, &c. do further pre-

For perjury in an
information be-
fore a magistrate
(a).

(a) This was the indictment settled by an eminent crown lawyer at the bar, see notes, against C. M. Mantor, spinner, in Middlesex, 41 Geo. 3. ante, 302 to 318.

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sent, that thereupon then and there, to wit, on the said, &c. at the Public Office aforesaid, in the parish of — aforesaid, in the county aforesaid, the said C. D. having personally appeared before the said J. G. as such justice as aforesaid, to answer the matters contained in the said information, and being then and there personally present, and having heard the said information read to him the said C. D., in the presence and hearing of the said J. G., so being such justice as aforesaid, he the said C. D. did then and there plead and allege to and for the said J. G. so being such justice as aforesaid, that he was not guilty of the said offence charged upon him by the said information, and thereupon the said J. G. did then and there, as such justice as aforesaid, proceed to hear and determine, and did accordingly then and there hear and determine, the matter of the said information, in the presence of the said C. D. And the jurors, &c. do further present, that at and upon the said hearing of the said matter of the said information by the said J. G. as such justice as aforesaid, A. B. late of, &c. appeared as a witness in support of the said information, to and before the said J. G. as such justice as aforesaid, and then and there, as such witness, by and before the said J. G. such justice as aforesaid, was in due manner sworn, and did take her corporal oath on the holy gospel of God, he the said J. G. so being such justice as aforesaid, then and there having full, competent, and sufficient power and authority to administer an oath to the said A. B. in that behalf (a). And the jurors, &c. do further present, that the said A. B. being so sworn as aforesaid, not having, &c. but being moved and seduced, &c. and being minded and desirous to subvert truth itself, and wrongfully and unjustly to cause the said C. D. to be convicted of the offence charged and alleged against him in and by such information as aforesaid, then and there, to wit, on the said, &c. at the public office aforesaid, in, &c. aforesaid, at and upon the said hearing of the said information by and before the said J. G. as such justice as aforesaid, did, as such witness as aforesaid, on her oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly, say, depose, swear, and give evidence to and before the said J. G. so being such justice, and as such justice so hearing the matter of the said information as aforesaid (amongst other things), in substance

(a) *Quære* if the materiality of the matter sworn to, should not be alleged, see ante, 307.

and to the effect following (that is to say), that the said A. B. bought a hot loaf of bread in the said C. D.'s shop (meaning the shop of the said C. D.) in ——— Street, in the said parish of, &c. on the 28th day of February last (meaning the 28th day of February, in the year of our Lord 1801), at 11 o'clock at night, at which time there were fifty other loaves in the shop, lying on the counter, in the window, and on the shelf, they were quite hot; whereas in truth and in fact, on the 28th day of February, in the year 1801 aforesaid, at 11 o'clock at night there were not fifty loaves in the said shop of the said C. D. lying on the counter, in the window, and on the shelf, that were hot; and whereas in truth and in fact, on the 28th day of February, in the year 1801 aforesaid, there were not, during any part of the night of that day, fifty loaves in the said shop of the said C. D. that were hot; and whereas in truth and in fact, when the said A. B. bought a hot loaf of bread in the said C. D.'s said shop, on the said 28th day of February, in the year 1801 aforesaid, there were not so many as ten loaves in the said shop, that were hot. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. on the said, &c. at the public office aforesaid, in the parish aforesaid, in the county aforesaid, at and upon the aforesaid hearing of the aforesaid information, before the said J. G. as such justice as aforesaid, upon her oath aforesaid (the said J. G. then and there having sufficient and competent power and authority to administer the said oath to her as aforesaid), then and there, by her own act and consent, and in manner and form aforesaid, did knowingly, falsely, wickedly, maliciously, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our lord the king and his laws, to the great damage of the said C. D. to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

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Middlesex. That on, &c. at the parish of, &c. T. H. was examined before H. J. P. esq. and P. C. esq. then being two of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] on a charge against him the said T. H. for being a rogue and vagabond, to wit, for that he the said T. H. did

For perjury in an information before two magistrates, charging a person with having taken illegal insurance in the lottery (a).

(a) This was the indictment by an eminent crown lawyer. against Thomas Archer, in See last precedent and notes, Middlesex, A. D. 1802, settled ante, 302 to 318.

on, &c. at the parish of, &c. in the said county, receive of and from T. A. the sum of one shilling and seven pence, in consideration of an agreement then and there made to repay unto him the said T. A. the sum of one pound six shillings and three pence, if the ticket numbered eight in the then present English state lottery should be drawn fortunate on the thirty-fourth day of the drawing of the said lottery; contrary to the form of the statute in such case made and provided. And the jurors, &c. do further present, that the said T. A. late of, &c. did appear in his proper person as a witness against the said T. H. touching the charge aforesaid, before the said H. J. P. and P. C. the justices aforesaid; and the said T. A. was then and there, to wit, on the said, &c. at, &c. in due manner sworn and took his corporal oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching the charge against the said T. H. before the said H. J. P. and P. C. the justices aforesaid, they the said H. J. P. and P. C. as such justices, then and there having lawful and competent power and authority to administer the said oath to the said T. A. in that behalf. And the jurors, &c. do further present, that the said T. A. being so sworn, and not having, &c. but being moved and seduced, &c. and entirely disregarding the laws and statutes of this realm, and the penalties thereby provided against wilful and corrupt perjury, and wickedly and maliciously devising, contriving, and intending unjustly to oppress and aggrieve the said T. H. and to cause and procure the said T. H. to be convicted of the offence aforesaid, and thereby to subject him to the pains and penalties of imprisonment, then and there, to wit, on the said, &c. at, &c. upon his oath aforesaid, before the said H. J. P. and P. C. the justices aforesaid, falsely, maliciously, wickedly, wilfully, and contemptuously did say, depose, and swear, in substance and to the effect following, that is to say, That on Thursday last, (meaning on Thursday the eighth day of April, in the 42d year aforesaid,) he the said T. A. insured number eight (meaning a certain ticket in the then present English state lottery numbered eight) with the prisoner (meaning the said T. H.) one sixteenth (meaning for one sixteenth part of the said ticket) that is to say, that he the said T. A. was to receive (meaning to receive of him the said T. H.) twenty-six shillings if the number (meaning the said ticket numbered eight) came up a prize that day, (meaning on the said eighth day of April, in the 42d year aforesaid,) that he the said T. A. paid him (meaning then paid the said T. H.) one

shilling and sevenpence, and that the said insurance was done at number six, in Gray's Inn Lane, the name of R. C. over the door, (meaning that the insurance of the said ticket numbered eight by the said T. A. with the said T. H. at a certain house numbered six, situate in Gray's Inn Lane, in the said parish of Saint Pancras, in the said county of Middlesex, with the name of R. C. over the door of the said house,) whereas in truth and in fact the said T. A. did not, on, &c. insure the ticket numbered eight, in the then present English state lottery, or any other ticket whatsoever, with the said T. H. for one sixteenth part of the said ticket; and whereas in truth and in fact, he the said T. A. was not to receive of the said T. H. twenty-six shillings, or any other sum of money whatsoever, if the said ticket numbered eight came up a prize on the said, &c. afore-said, and whereas in truth and in fact the said T. A. did not then pay to him the said T. H. one shilling and seven pence, or any other sum of money whatsoever; and whereas in truth and in fact the insurance of the said ticket numbered eight, was not done by the said T. A. with the said T. H. at a house numbered six, situate, &c. with the name of R. C. over the door of the said house, or at any other house situate, &c. And so, &c. [*as in the last precedent.*]

That heretofore, to wit, on, &c. at, &c. in the county of Surrey, before G. H. &c. then being two of the justices of our said lord the king, assigned, &c. [*as ante*, 192.] and residing near to the place where the offence in the complaint and information hereinafter next mentioned to have been exhibited before them, was alleged to have been committed, came E. F. and then and there exhibited, to and before the said justices, a certain complaint and information, and thereby informed them the said justices, that within three months then last past, to wit, on, &c. at, &c. C. D. of, &c. did sell by retail distilled spirituous liquors or strong waters, without first taking out a licence authorizing him the said C. D. so to do, as the law required, for which said offence the said C. D. had forfeited the sum of forty pounds, and thereupon the said E. F. as well for his said majesty as for himself, prayed the consideration of them the said justices in the premises, and that the said C. D. might be convicted of the said offence, and might forfeit and pay the said penalty in that

For perjury before justices in support of an information for selling spirits without licence (a).

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(a) See the last two precedents, and the next, and the notes, *ante*, 302 to 318.

behalf, according to the form of the statute in such case made and provided, and that the said C. D. might be summoned to answer the premises before them the said justices. And the jurors, &c. do further present, that afterwards, to wit, on, &c. at, &c. aforesaid, the said C. D. having then and there pleaded not guilty to the said complaint and information, the said complaint and information in due manner came on to be heard, tried, and determined before the said justices, they the said justices then and there having competent power and authority to hear, try, and determine the same. And the jurors, &c. do further present, that a certain question material to the determination of the said complaint and information then and there arose before the said justices, that is to say, whether he the said C. D. had sold by retail distilled spirituous liquors or strong waters in manner and form as in and by the said complaint and information was alleged. And the jurors, &c. do further present, that A. B. late of, &c. officer of excise, well knowing the premises aforesaid, and wickedly devising and intending unjustly to injure and aggrieve the said C. D. and to cause and procure him the said C. D. to be convicted of the said offence, so in and by the said complaint and information charged and alleged against him as aforesaid, and to prevent the due course of justice, then and there, to wit, on, &c. at, &c. at and upon the hearing of the said complaint and information, so exhibited as aforesaid, to and before the said G. H. &c. so being such justices as aforesaid, came to and before the said G. H. &c. so being such justices as aforesaid, as a witness in support of the said complaint and information, and thereupon the said A. B. was then and there in due manner sworn, and did take his corporal oath upon the Holy Gospel of God before the said G. H. so being such justices as aforesaid, (they the said G. H. &c. then and there having sufficient and competent power and authority to administer the said oath to the said A. B. in that behalf,) to speak the truth, the whole truth, and nothing but the truth, of and in the premises. And the jurors, &c. do further present, that the said A. B. being so sworn as aforesaid, not having, &c. but being moved and seduced, &c. then and there, to wit, on, &c. at, &c. at and upon the hearing of the said information and complaint before the said G. H. &c. so being such justices as aforesaid, and so having full and competent power and authority to administer the said oath, did falsely, wickedly, maliciously, unlawfully, and corruptly, and of his own free will and consent, say, depose, swear, and give in evi-

dence, in substance and to the effect following, that is to say, that he the said A. B. on, &c. bought of the said C. D. at, &c. a quantity of gin and water, which was brought to him the said A. B. in a glass, and that he the said A. B. paid to the said C. D. six pence for the same, and on his the said A. B.'s being particularly interrogated and asked whether he the said A. B. paid the said C. D. the said six pence, he the said A. B. persisted in the said false, wicked, malicious, voluntary, and corrupt assertion and deposition so made as aforesaid; whereas in truth and in fact he the said A. B. did not, &c. in manner and form as he the said A. B. upon his oath aforesaid, so taken and administered as aforesaid, in that behalf so falsely deposed and swore as aforesaid. And so, &c. [*as ante*, 433, 4.]

Essex. That heretofore, to wit, on, &c. at, &c. before G. H. and I. K. esquires, then being two of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] came onc E. F. of, &c. and then and there exhibited, to and before the said justices, a certain information and complaint, and thereby informed them the said justices, that on the 26th day of January instant, (meaning the 26th day of January, in the year of our Lord 1796,) at T. aforesaid, in the county aforesaid, (meaning in the said county of E.) one C. D. of, &c. did keep and use a certain engine called a gun, to kill and destroy the game, he the said C. D. not being qualified by the laws of this realm so to do, whereby he had forfeited the sum of £5, and therefore the said E. F. prayed the judgment of them the said justices in the premises, and that he might have one moiety of the said forfeiture, according to the form of the statute in that case made, and that the said C. D. might be summoned to answer the premises before them the justices aforesaid. And the jurors, &c. do further present, that afterwards, to wit, on, &c. at, &c. aforesaid, the said C. D. having been in due manner summoned then and there to appear before them the aforesaid justices, to answer to the said information and complaint, and to be further dealt with according to law, in his own proper person did appear before the said I. K. so being such justice as aforesaid, and then and there pleaded to the said information and complaint, and said that he was not guilty of the

For perjury in giving evidence before a justice, on an information on the game laws (a).

(a) This was the indictment against John Waller, A. D. 1796, from the MS. of a gentleman at the bar. See the last three precedents, and *ante*, 302 to 318.

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said offence in the said information and complaint mentioned, in manner and form as in and by the said information was alleged. And the jurors, &c. that A. B. late of, &c. labourer, well knowing the premises aforesaid, and wickedly devising and intending unjustly to aggrieve the said C. D. and to cause and procure him to be convicted of the said offence, so in and by the said information and complaint charged and alleged against him as aforesaid, then and there, to wit, on the said, &c. at, &c. aforesaid, at and upon the hearing of the said information and complaint so exhibited as aforesaid, by and before the said I. K. so being such justice as aforesaid, came to and before the said I. K. so being such justice as aforesaid, as a witness, in support of the prosecution of the said information (a), and thereupon the said A. B. was in due manner sworn, and did take his corporal oath upon the holy gospel of God, before him the said I. K. so being such justice as aforesaid, he the said I. K. then and there having sufficient and competent power and authority to administer the said oath to the said A. B. in that behalf. And the jurors aforesaid, on their oath aforesaid, do further present, that the said A. B. being so sworn as aforesaid, not having, &c. but being moved, &c. then and there, to wit, on the said, &c. at, &c. aforesaid, at and upon the hearing of the said information and complaint before the said I. K. so being such justice as aforesaid, upon his oath aforesaid, did falsely, wickedly, maliciously, unlawfully, and corruptly say, depose, swear, and give in evidence, at and upon the hearing of the aforesaid information and complaint, in substance and to the effect following, that is to say, that on, &c. aforesaid, he the said A. B. saw the said C. D. fire at a hare in a field belonging to Mr. C. at, &c. aforesaid, but the hare ran away, whereas, &c. and so, &c. [*as ante*, 433, 4.]

For perjury in
filiating a child
before a justice
of the peace (b).

That A. B. late of, &c. single woman, on, &c. at, &c. was pregnant with child, and that the said child was likely to be born a bastard, and to be chargeable to the said parish of K. in the said county. And the jurors, &c. do further present,

(a) There is in this precedent no averment of the materiality of the question. *Quare* if there ought not to be such averment, see ante, 307. 1 *Ld. Raym.* 257. 2 *Ld. Raym.* 289.

Holt, 535. 1 *T. R.* 67, 68. 4 *Bla. Com.* 437, see ante, 309.

(b) See form, 4 *Wentw.* 232, and the last four precedents, ante, 302 to 318.

that the said A. B. so being pregnant with child as aforesaid, not having, &c. but being moved and seduced, &c. and wickedly and maliciously contriving and intending, not only to deprive C. D. late of, &c. of his good name, fame, and reputation, and to put the said C. D. to great labour, trouble, and expence, and also falsely to charge the said C. D. with begetting her with child, and being the father of the said child with which she the said A. B. was then pregnant, on, &c. aforesaid, at, &c. aforesaid, in her own proper person, came before E. F. clerk, then being one of his majesty's justices of the peace, assigned, &c. [*as ante*, 182,] and then and there having sufficient power and authority to administer an oath to, and take the examination of her the said A. B. hereinafter mentioned, and then and there the said A. B. was sworn and took her corporal oath before the said E. F. on the holy gospel of God, and the said A. B. did then and there, upon her oath aforesaid, before the said E. F. as aforesaid, wilfully, and of her own free will and accord, falsely, wickedly, and corruptly say, depose, and swear, and give in her examination, in writing, as followeth, to wit, Somerset. The voluntary examination of A. B. of, &c. taken upon oath before me E. F. one of his majesty's justices of the peace in and for the said county, this third day of, &c. who saith that she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of K. in the said county, and that C. D. of, &c. (meaning the said C. D.) is the father of the said child, as by the said examination, relation being thereunto had, doth and may more fully appear; whereas in truth and fact, the said C. D. was not, nor is the father of the said child with which the said A. B. was then pregnant as aforesaid, nor of any other child of the body of the said A. B. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. on the said, &c. at, &c. as aforesaid, before the said E. F. so being one of his majesty's justices of the peace in and for the said county as aforesaid, and so having sufficient power and authority to administer the said oath to the said A. B. and to take her examination hereinbefore mentioned, falsely, maliciously, wickedly, wilfully, and corruptly, on her oath aforesaid, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil example of all others, to the great damage of the said C. D. and against the peace of, &c.

The like in another form, where the child was born before the filiation (a).

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That A. B. late of, &c. single woman, on, &c. at, &c. being pregnant, was delivered of a male child, which by the laws of this realm was born a bastard, and that the said A. B. afterwards, to wit, on, &c. at, &c. came in her own proper person before J. H. esquire, and G. H. esquire, then being two of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] and did then and there, before the said justices, charge one E. F. of the parish aforesaid, with having lately before that time begotten upon the body of her the said A. B. a certain male child, which was afterwards born alive of the body of her the said A. B. a bastard, and that she the said A. B. was then and there before the said justices duly sworn, and did take her corporal oath upon the holy gospel of God, concerning the said premises, (they the said justices, and each of them, then and there having sufficient and competent power and authority to administer the said oath to the said A. B.) and that the said A. B. being so sworn as aforesaid, wickedly and maliciously devising and intending, falsely and unjustly to charge and burthen the said E. F. with the maintenance and support of the said bastard child, and not only to draw him into great charges and expences of his monies, but also to bring him into great scandal, infamy, and disgrace, as a lewd and unchaste person, then and there upon her oath aforesaid, in a certain examination before the said justices, taken in writing in that behalf, did falsely, maliciously, wilfully, wickedly, and corruptly say, depose, and swear, (amongst other things) in substance and to the effect following, that is to say, [*state the examination, with proper innuendoes, and assign the perjury as usual, and conclude as in last precedent.*]

For perjury in swearing to contents of articles of the peace before justices at sessions (b).

Essex. That at the general quarter sessions of the peace of our sovereign lord George the Third, &c. holden at Chelmsford, in and for the county of Essex, on, &c. before G. H. &c. esquires, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] A. B. late of, &c. did come in his own proper person, and did then and there produce and exhibit, to and before the said justices, certain articles of the peace against C. D. by the name and addition of, &c. and the said A. B. then and there was sworn, and took his corporal oath before the said justices, on the holy gospel of God,

(a) See last precedent.

(b) See 1 Campb. 404, and ante, 302 to 316.

touching and concerning the matters contained in the said articles of the peace, (they the said justices respectively, then and there having sufficient and competent power and authority to administer an oath to the said C. D. in that behalf,) and that the said A. B. not having, &c. but being moved and seduced, &c. being so sworn as aforesaid, did, upon his said corporal oath, concerning the matters contained in the said articles of the peace, before the said justices of our said lord the king, so having such sufficient and competent power and authority as aforesaid, falsely, wickedly, wilfully, maliciously, and corruptly say, depose, and swear, (amongst other things) in substance and to the effect following, (that is to say) that the said C. D. (meaning the said C. D.) then was a man of a malicious and vindictive disposition, and in the frequent habit of abusing him the said A. B. (meaning the said A. B.) by gross and insulting language; that in the morning of, &c. then last, the said C. D. (meaning the said C. D.) came to the said A. B.'s (meaning the said A. B.'s) house, and in a very peremptory and insulting manner demanded, why the said A. B. (meaning the said A. B.) broke open his the said C. D.'s (meaning his the said C. D.'s) bar-door while he was in Spain, adding, that the said A. B. (meaning the said A. B.) was a damned dirty scoundrel and a villain, together with other gross, base, and abusive language, and at the same time drew his the said C. D.'s (meaning the said C. D.'s) sword nearly half way out of its scabbard, and challenged the said A. B. (meaning the said A. B.) to meet him (meaning the said C. D.) with a brace of pistols, or a sword, meaning thereby, as the said A. B. (meaning the said A. B.) apprehended and verily believed, to fight a duel with him the said A. B., and that the said C. D. (meaning the said C. D.) at the same time called the said A. B. (meaning the said A. B.) a blackguard, and repeatedly put his clenched fist to the said A. B.'s (meaning the said A. B.'s) face. Whereas in truth and in fact, the said C. D. was not a man of malicious and vindictive disposition, or in the frequent habit of abusing the said A. B., by gross and insulting language; and whereas, in truth and in fact, the said C. D. did not, in the morning of, &c. then last, come to the said A. B.'s house, and in a very peremptory and insulting manner demand, why the said A. B. broke open his the said C. D.'s bar-door while he was in Spain; and whereas, in truth and in fact, the said C. D. did not say to the said A. B., that he was nor did he represent him to be a damned dirty scoundrel, and a villain, or any other gross, base,

and abusive language; and whereas, in truth and in fact, the said C. D. did not draw his sword nearly half way out of his scabbard, and challenge the said A. B. to meet him with a brace of pistols or a sword; and whereas, in truth and in fact, the said A. B. did not apprehend and verily believe that the said C. D. meant to fight a duel with him the said A. B.; and whereas, in truth and in fact, the said C. D. did not call the said A. B. a blackguard, or repeatedly put his clenched fist to the said A. B.'s face, in manner and form as the said A. B. so falsely swore as aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. on the said, &c. at, &c. aforesaid, upon his oath aforesaid, before the said justices, and others their fellows aforesaid, so as aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said A. B. as aforesaid, by his own voluntary act and consent, and of his own wicked and corrupt mind and disposition, in manner and form aforesaid, falsely, maliciously, knowingly, wickedly, wilfully, and corruptly, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king, and his laws, to the great damage and oppression of the said C. D., to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further say, at the said general quarter sessions of the peace of our sovereign lord George the Third, &c. holden at C. aforesaid, in and for the county of E., on, &c. before G. H., &c. esquires, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] the said A. B. did come in his own proper person, and was then and there before the said justices duly sworn, and did take his corporal oath before the said justices on the holy gospel of God, (they the said justices respectively then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf); and the said A. B. not having, &c. but being moved and seduced, &c. being so sworn as aforesaid, did, upon his said corporal oath, before the said justices of our said lord the king, so having such sufficient and competent power and authority as aforesaid, falsely, wickedly, wilfully, maliciously, and corruptly say, depose, and swear, amongst other things, in substance and to the effect following, that is to say, that, &c. [*state a part of what was sworn, with proper innuendoes, and assign the perjury, and conclude as in the first count.*]

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Second count.

London. The jurors for our lord the king upon their oath present, that heretofore, to wit, on, &c. at London, that is to say, at the parish of Allhallows Barking, in the Ward of Tower, in London aforesaid, an inquiry was legally instituted and taken before R. G. then and continually from thence to the finding the present bill of indictment, being one of the surveyors general of his majesty's customs, touching and concerning the conduct of one J. H., one of the land-waiters and an officer of his said majesty's customs, in taking an account of the weight of a certain cargo of fustick, landed from on board the ship Rose; and that in and upon such inquiry so legally instituted and taken as aforesaid, one T. B. late of the parish and ward aforesaid, in London aforesaid, labourer, being a wicked and evil-disposed person, afterwards, to wit, on, &c. at the parish and ward aforesaid, in London aforesaid, was produced as a witness, touching and concerning the matters of the said inquiry, and in his own proper person, before the said R. G. in and upon the said inquiry, did take his corporal oath, and was then and there duly sworn upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters of the said inquiry, (the said R. then and there having competent and legal authority to administer the said oath to the said T. in that behalf) and that the said T. being so sworn as aforesaid, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly and maliciously devising and intending falsely and unjustly to charge the said J. H. with wilful neglect of his duty, and as far as in him lay to bring him into great scandal, infamy, and disgrace, then and there, upon his oath aforesaid, in a certain examination before the said R. G. taken in writing in that behalf, did falsely, maliciously, wilfully, wickedly, and corruptly say, depose, and swear (amongst other things) in substance and to the effect following, that is to say, &c. [*set out the oath with proper innuendoes, and assign the perjury, and conclude as follows.*] And so the jurors aforesaid, upon their oath aforesaid, do say, that the said T. B. on, &c. aforesaid, at, &c. aforesaid, before the said R. G. (so as aforesaid, having sufficient and competent power and authority to administer the said oath to the said T. B. in that behalf) falsely, maliciously, wickedly, wilfully,

For perjury before a surveyor-general of customs, on an investigation of a land-waiter's conduct, on 24 G. 3. c. 40. s. 28, 9 (a).

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(a) This was the indictment against Titus Buckley, A. D. 1799, from the Crown Office.

and corruptly in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the great damage of the said J. H., to the evil and pernicious example of all others, against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown, and dignity.

INDICTMENTS FOR PERJURY IN CRIMINAL CASES, IN PROCEEDINGS BEFORE TRIAL.

For perjury before a justice of the peace in swearing that the prosecutor had assaulted the defendant, and taken from him a bank note and money (a).

That A. B. late of, &c. wickedly and maliciously devising and intending unjustly to vex and aggrieve one C. D. and to subject him to the punishments, pains and penalties by the laws of this realm provided for persons guilty of felony, theft, and larceny, and breach of the peace, on, &c. at, &c. came in his own proper person before E. F. then and yet one of the justices of our said lord the now king, assigned, &c. [*as ante*, 182,] and then and there was sworn and took his corporal oath upon the holy gospel of God, before the said E. F. the justice aforesaid, (he the said E. F. then and there having competent authority to administer the said oath to the said A. B. in that behalf,) and that the said A. B. being so sworn as aforesaid, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there before the said E. F. (he the said E. F. having competent authority to administer the said oath as aforesaid) upon his oath aforesaid, upon a certain information intituled, "Gloucestershire, to wit. The information of A. B. of, &c. surgeon and apothecary, (meaning the said A. B.) taken this thirtieth day of September 1788, before me (meaning the said E. F.) one of his majesty's justices of the peace in and for the said county;" falsely and maliciously, wilfully, and corruptly did say, depose, swear, and give information in writing, to the purport and effect following, that is to say, this informant (meaning the said A. B.) upon his (meaning the said A. B.'s) oath saith, that on, &c. (meaning the then month of September) between four and five of the clock in the afternoon, he

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(a) See 4 Wentw. 244. See precedents, ante, 431 to 440, and notes, ante, 302 to 318.

(meaning the said A. B.) went to the dwelling-house of Mr. T. M. called or known by the name of the Prince and Princess, in Tetbury aforesaid, (meaning Tetbury in the said county of Gloucester) and went into the room of the said house (meaning the said room in the said house of the said T. M.) where an auction was then held, and that in about four or five minutes after he (meaning the said A.B.) entered the said room in the aforesaid house, (meaning the said room in the said house of the said T. M. wherein the said auction was so then held as aforesaid,) C. D. of T. aforesaid, attorney, (meaning the said C.D.) came behind him this informant, (meaning the said A.B.) and took him (meaning the said A. B.) in his (meaning the said C. D.'s) arms, and dragged him (again meaning the said A.B.) to the outside of a door to the aforesaid room, (meaning the said room in the said house of the said T. M.) that leads into a yard belonging to the aforesaid house, (meaning the said house of the said T. M.) and that when he this informant (meaning the said A.B.) was upon his (meaning the said C. D.'s) knees just without the door aforesaid and room aforesaid, (meaning the said door and the said room in the said house of the said T. M.) struggling with him the said C. D., this informant (meaning the said A. B.) further upon his (meaning the said A. B.'s) oath saith, that the said C. D. put his (meaning the said C. D.'s) right hand into the breeches pocket of him this informant (meaning the said A. B.) and took thereout (meaning out of the said breeches pocket of the said A. B.) a Bath bank-note of five guineas value, three guineas in gold, two lancets, and a case the said lancets were in, and some silver. Whereas in truth and in fact, he the said C. D. did not come behind him the said A. B. and did not take him the said A. B. in his arms and drag him to the outside of the door aforesaid, or in any other manner take or drag him the said A. B. and whereas in truth and in fact, on Monday the eighth day of September 1788, or at any time whatsoever, he the said A.B. was not upon his knees just without the door aforesaid and room aforesaid, struggling with him the said C. D.; and whereas in truth and in fact, on, &c. or at any other time whatsoever, the said C. D. did not put his right hand or his other hand into the breeches pocket or any other pocket of the said A. B., and did not take thereout a Bath bank-note or any other bank-note or any other note of any other value, or three guineas in gold, or two lancets, or a case in which the said lancets were in, or some silver, or any or either of them or any part thereof; and

whereas in truth and fact, the said C. D. did not take any property whatsoever of the said A. B. from him in manner aforesaid, or in any other manner, that is to say, at, &c. aforesaid. And so, &c. [*as ante*, 443.]

For perjury in an affidavit before a justice, in order to corroborate an affidavit made by a third person respecting an assault alleged to have been committed on the latter (a).

Middlesex. That formerly, to wit, on, &c. at, &c. I. K. late of, &c. came before G. H. esq. then and yet being one of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] and then and there upon her oath, charged A. B., C. D., and E. F. before the said G. H. the justice aforesaid, (he the said G. H. then and there having competent power and authority to administer the oath to the said I. K. on that behalf) with having assaulted, stricken, and bruised her the said I. K.; and that the said I. K. then and there also deposed upon oath before the said G. H. the justice aforesaid, he the said G. H. then and there having competent, &c. that she the said I. K. verily believed her life was then in very great danger. And the jurors, &c. do further present, that it then and there became, and was a material question whether one A. B. as a midwife attended the said I. K. on, &c. and found her in a very dangerous condition, and whether the said child or children whereof she the said I. K. then was pregnant, was or were dead within her, occasioned by the violence which she the said I. K. had received from the said C. D. and E. F. And the jurors aforesaid, on their oath aforesaid, do further present, that A. B. late of, &c. widow, well knowing the premises, and wickedly devising and intending unjustly to aggrieve the said C. D. and E. F. and to procure them without any just cause to be imprisoned and kept in prison for a long space of time on the said, &c. at, &c. aforesaid, then and there being present in her own proper person before the said G. H. then and there being one of the justices of our said lord the king, assigned, &c. [*as ante*, 182] she the said A. B. did then and there take her corporal oath, and was sworn upon the holy gospel of God to make true answer and to speak the truth, the whole truth, and nothing but the truth, before the said G. H. touching and concerning the premises aforesaid, (he the said G. H. then and there having sufficient and competent power and authority to administer the said oath to the said A. B. in that behalf) and that the said A. B.

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(a) See Cro. C. C. 8th edit. precedents ante, 431 to 440, 322. 7th edit. 571; and the and the notes ante, 302 to 313.

not having, &c. her eyes, but being moved and seduced, &c. then and there before the said G. H. upon her oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, give, and make information in writing (amongst other things) in substance and to the effect following, that is to say, that she the said A. B. as a midwife attended the said I. K. since Sunday night then last, and that the said A. B. found her the said I. K. in a very dangerous condition, and that she the said A. B. believed that the child or children the said I. K. was then pregnant of, was, or were dead within her the said I. K. occasioned by the violence which she the said I. K. had received from the said C. D. and G. H. Whereas in truth and in fact, at the time she the said A. B. took her oath aforesaid, in form aforesaid, or at any other time, during the time she is mentioned in the said information of her the said A. B. to have attended the said I. K., she the said A. B. did not find her the said I. K. in a very dangerous condition, or in any dangerous condition whatsoever; and whereas in truth and in fact, she the said I. K. was not then or at any other time during the time in that behalf aforesaid, in any dangerous condition, but she the said A. B. at the time she so took her oath aforesaid, in form aforesaid, then and there well knew that the said I. K. was not then in any dangerous condition; and whereas in truth and in fact at the said time, when the said A. B. so took her oath aforesaid, in form aforesaid, or at any other time during the time she is mentioned to have attended the said I. K. as aforesaid, she the said I. K. was not pregnant of, or with any child or children, nor was or were any child or children then, or during the time in that behalf aforesaid, dead within her the said I. K.; and whereas in truth and in fact, at the time when the said A. B. so took her oath aforesaid, in form aforesaid, she the said A. B. well knew that the said I. K. was not then, or at any other time during the said time she is mentioned to have attended the said I. K. as aforesaid, pregnant of or with any child or children, and that then, or at any time during the time in that behalf aforesaid, there was not nor were any child or children dead within her, the said I. K. And so, &c. [*as ante*, 443.]

Middlesex, to wit. That C. A. late of, &c. for divers years now last past, hath carried on and exercised the trade and business of a cornfactor, and that the said C. A. whilst he so carried on and exercised the aforesaid trade and business, and

For perjury in an affidavit in K. B. in support of a motion for a criminal information against a third

person for a li-
bel. (a)

before the making of the affidavit hereinafter mentioned, as such corn-factor, purchased for and supplied the commissioners of our said lord the king for victualling his majesty's navy for the time being with divers large quantities of malt and grain. And the jurors, &c. do further present, that the said C. A. contriving and intending to aggrieve and injure one W. B. on, &c. in order to obtain a rule of the court of our said lord the king, before the king himself, against the said W. B. whereby it might be ordered by the said court that a day might be given to the said W. B. to show cause why an information should not be exhibited against him the said W. B. for certain misdemeanors, in publishing certain supposed scandalous libels concerning the said C. A. as such corn-factor in purchasing and supplying the said commissioners for victualling his majesty's navy, did come in his the said C. A.'s proper person into the said court of our said lord the king, before the king himself, (the said court then and still being at, &c.) and did then and there produce to the said court a certain affidavit in writing of him the said C. A. to be exhibited to the said court for the purpose aforesaid, and then and there before the same court was duly sworn, and took his corporal oath upon the holy gospel of God, concerning the truth of the matters contained in the said affidavit (the same court then and there having a lawful and competent authority to administer the same oath to the said C. A. and to take and receive the affidavit of the said C. A.) And that the said C. A. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and having no regard to the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there, to wit, on, &c. at, &c. aforesaid, in and by his affidavit aforesaid, upon his oath aforesaid, before the said court (the said court then and there having a lawful and competent authority to administer the said oath to the said C. A. and to receive his said affidavit) falsely, corruptly, knowingly, wilfully, and maliciously depose and swear, (among other things), as follows, that is to say, that, &c. [*here state the matter sworn to, with proper innuendoes, as in the precedent Cro. C. C. 8th edit. 365. Cro. C. A. 437.*] as by the said affidavit of the said C. A. in writing, remaining in the said

(a) See Cro. C. C. 8th edit. 365. Cro. C. A. 437. 1 Saund. 249, n. l. This precedent is said to be very correct, 7 T. R. 320. See the note ante, 302 to 318.

court of our lord the king, before the king himself, at Westminster aforesaid, in the county of Middlesex aforesaid, more fully appears. Whereas, &c. [*here assign the perjury as usual, and as in the precedents referred to in the note, and conclude as ante, in K. B. 329, or in C. P. 377.*]

That some time ago, to wit, on Friday, on the feast day of Saint Martin, in the ninth year, &c. in the court of our said lord the king, before the king himself, the same court then and still being at, &c. a rule of the said court was made, whereby, upon reading the several affidavits of J. B. of the borough of A. in the county of B. inn-keeper, and J. P. of the same place, victualler, it was ordered, that Saturday next after the octave of Saint Martin, should be given to W. H. esq. to shew cause why an information should not be exhibited against him for certain misdemeanors, upon notice of that rule to be given to him in the mean time, and that afterwards, to wit, on Monday next after the octave of Saint Martin, in the year aforesaid, at W. aforesaid, the said rule of court was enlarged by another rule of the same court there made, whereby, amongst other things, it was by the said court ordered, that the second day of the then next term should be peremptorily further given to the said W. H. to shew cause why an information should not be exhibited against him for certain misdemeanors (upon the undertaking in the same last-mentioned rule expressed) in and by one of which said affidavits, whereon the said original rule was grounded, to wit, the affidavit of the said J. B. it was sworn and alleged (amongst other things), in substance and to the effect following, to wit, that he the said W. H. being a justice of the peace for the said borough, had then lately refused to grant them the said J. B. and J. P. licences; and that, &c. [*state matter sworn to, with proper innuendoes, Cro. C. C. 8th edit. 386.*] And the jurors, &c. do further present, that the said W. H. late of, &c. esq. having due notice of the said original rule, and the said other rule of court, above-mentioned, respectively, and yet having the least regard for truth and justice, but minding and wickedly imagining, devising, and intending, by falsehood and wicked means, to procure the same first rule to be discharged and set aside, and

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For perjury committed by a justice of the peace in an affidavit before a judge of K. B. upon showing cause against a rule for a criminal information against defendant, for partiality and refusing to licence a public house (a).

(a) See Cro. C. C. 8th edit. 336. 7th edit. 579. See notes, ante, 302 to 318.

to prevent justice, and to pervert the due course of law, and also to vex, harass, aggrieve, and oppress the aforesaid J. B. and J. P. afterwards, to wit, on, &c. at, &c. aforesaid, in his proper person, before Sir J. Y. knight, then and yet being one of the justices of our said lord the king, assigned to hold pleas in the said court of our said lord the king, before the king himself, was duly sworn, and did take his corporal oath, upon the holy gospel of God, touching and concerning the matter of the said original rule then depending against him the said W. H. (he the said Sir J. Y. then and there having sufficient and competent power and authority to administer an oath to the said W. H. in that behalf; and that the said W. H. not having, &c. but being moved and seduced, &c. then and there, to wit, on, &c. last aforesaid, at, &c. aforesaid, upon his oath aforesaid, before the said Sir J. Y. the justice aforesaid, did falsely, maliciously, wickedly, wilfully, and corruptly say, depose, swear, and make affidavit in writing (amongst other things), in substance and to the effect following, that is to say, that, &c. [*here state matter sworn by defendant, with proper innuendoes and assignments of perjury, as usual, and conclude as ante, 443.*]

For perjury in answers to interrogatories in K. B. (a).

Middlesex, to wit. The jurors for our lord the king, upon their oath present, that heretofore, to wit, on Saturday next after the octave of St. Hilary, in the 34th year of the reign of our sovereign lord George the Third, now king of Great Britain, and so forth, in the court of our said lord the king, before the king himself (the same court then being at Westminster, in the said county of Middlesex), one Matthew Cunningham (he the said M. C. then being present in the said court of our said lord the king, before the king himself), was sworn and took his corporal oath upon the holy gospel of God, to make true answers to all such interrogatories as should be exhibited to him in the said court (touching a contempt supposed to have been by him committed against the said court) the said court then and there having a lawful and competent power and authority to administer such oath to the said M. C.; and thereupon certain interrogatories in writing were then and there exhibited to the said M. C. according to the course and practice

(a) This was the indictment 1794, from the crown office, against Cunningham, A. D. ante, notes, 302 to 318.

of the said court, to be answered by him the said M. C. of which said interrogatories the fourth, fifth, sixth, seventh, eighth, and last, are to the tenor and effect following, that is to say, fourth interrogatory, were you, &c. fifth interrogatory, did you, &c. sixth interrogatory, did you, &c. seventh interrogatory, did you, &c. as by the said fourth, fifth, sixth, seventh, eighth, and last interrogatories, remaining of record in the said court of our said lord the king, before the king himself, at Westminster aforesaid, in the said county of Middlesex, may more fully appear. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said M. C. late of the parish of Saint Clement Danes, within the liberty of Westminster, in the said county of Middlesex, gentleman, afterwards, that is to say, on the said Saturday next, after the octave of Saint Hilary, in the thirty-fourth year aforesaid, was duly examined in the said court of our said lord the king, before the king himself, at Westminster aforesaid, in the said county of Middlesex, according to the usage and custom of the said court upon the said interrogatories, and did then and there, (not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil) falsely, wilfully, and corruptly say, depose, swear, and answer, in writing, upon his oath to the said fourth, fifth, sixth, seventh, eighth, and last interrogatories, in these words, that is to say, &c. [*here set out the answer with proper innuendoes,*] whereas in truth and in fact, the said M. C. &c. [*negative the facts contained in the answer.*] And so the jurors aforesaid, now here sworn and charged to inquire for our said lord the king, and for the body of the said county, upon their oaths aforesaid, do say, that the said M. C. on the, &c. at Westminster aforesaid, in the said county of Middlesex, in the court of our said lord the king, before the king himself, at Westminster aforesaid, in the said county of Middlesex, the said court then and there having a lawful and competent power and authority to administer the said oath to the said M. C. in that behalf as aforesaid, did falsely, wilfully, and corruptly, in manner and form aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, and to the evil example of all others, and against the peace of our said lord the king, his crown and dignity.

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For perjury in an affidavit of the service of notice to try a traverse (a).

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That at the general quarter sessions of the peace of our said lord the king, holden at the Guildhall of the city of Westminster, in and for the liberty of the dean and chapter of the collegiate church of Saint Peter, Westminster, in the city, borough, and town of W. in the county of M. on, &c. before, &c. others their fellows, justices of the said lord the king, assigned to keep the peace of our said lord the king, in and for the liberty aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said liberty, a certain indictment or prosecution of J. S. was prosecuted and found against W. J. for a certain assault therein alleged to have been committed by the said W. J. on the said J. S. and the jurors, &c. that afterwards, and before the trial of the said indictment, to wit, at the general quarter sessions of the peace of our said lord the king, holden at the Guildhall of the city of Westminster, in and for the liberty of the dean and chapter of the collegiate church of Saint Peter, Westminster, in the city, borough, and town of Westminster, in the county of Middlesex aforesaid, on, &c. before, &c. and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said liberty, and also to hear and determine divers felonies, trespasses, and misdemeanors committed in the said liberty, A. B. late of, &c. came in his proper person into the court of the same sessions, and then and there did produce and exhibit to the said court a certain affidavit in writing of him, the said A. B. with a certain notice thereunto annexed, which said notice was and is as follows, to wit, "The king, on the prosecution of J. S. against W. J. for an assault. Mr. J. S. Take notice, that I shall attend at the next quarter sessions of the peace for the city and liberty of Westminster, to be holden at the Guildhall, in King's Street, Westminster aforesaid, on, &c. by nine o'clock in the forenoon of the same day, then and there to try my traverse upon the indictment preferred by you against me for an assault, dated, &c. Your's, &c. W. J. the above-named defendant. Witness, A. B." And which said affidavit was and is entitled as follows, to wit, city and liberty of Westminster aforesaid, to wit, The king, on the prosecution of J. S. (meaning the said J. S.) against W. J. (meaning the said W. J.) for an assault, and the said A. B. then and there in the said court was duly sworn, and did take his corporal oath upon

(a) From the MS. of a gentleman at the bar, see notes, ante, 302 to 318.

the Holy Gospel of God, concerning the truth of the matters contained in the said affidavit, the said court then and there having sufficient and competent power, &c. and to take and receive the said affidavit of him, the said A. B. in that behalf. And the jurors, &c. do further present, that A. B. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, and contriving and intending, as far as in him lay, to hinder and obstruct the due course of public justice, and to cause the said W. J. to be acquitted of the premises in the said indictment mentioned, then and there, to wit, on, &c. at the Guildhall of the city of Westminster, to wit, at the parish of, &c. in the county of Middlesex, in and by his affidavit aforesaid, upon his oath aforesaid, in the said court of the sessions last aforesaid, the said court then and there having such power and authority as aforesaid, falsely and maliciously, wickedly, wilfully, and corruptly did say, depose, and swear, amongst other things, as follows, that is to say [*insert the parts of the affidavit with innuendoes*], as by the said affidavit more fully appears; whereas, in truth and in fact, the said A. B. did not, on, &c. serve the said J. S. with a true copy of the notice annexed to the said affidavit, by delivering the same to the said J. S. at his house in Boulton Mews, Berkeley Square; and whereas, in truth and in fact, the said A. B. did not, on the day and year last aforesaid, or at any other time whatsoever, serve the said J. S. with a copy of any notice. And so, &c. the jurors aforesaid, upon their oath aforesaid, do say that the said B. C. on, &c. at, &c. in the court of the sessions last aforesaid, the said court then and there having such power, &c. by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure, &c. in contempt, &c. to the evil, &c. and against the peace, &c.



INDICTMENTS FOR PERJURY IN CRIMINAL PROCEEDINGS,—ON TRIAL, &c.

For perjury in giving evidence on trial at Westminster-hall, of an issue on an indictment for perjury (a).

Middlesex, to wit. The jurors, &c. that at the sitting of nisi prius, holden after the term of Saint Michael, in the 45th year, &c. at Westminster, in and for the county of Middlesex, in the great hall of pleas there called Westminster-hall, according to the form of the statute in such case made and provided, before the right honorable E. Lord E. then and now chief justice of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, a certain issue in due manner joined in the said court of our said lord the king, before the king himself, between our said lord the king, and one T. P. otherwise called J. W. upon a certain indictment then depending against him, the said T. P. otherwise called J. W. for wilful and corrupt perjury, came on to be tried, and was then and there, in due form of law, tried by a certain jury of the country, in due manner sworn and taken for that purpose, and that at and upon the trial of the said issue, one H. B. late of, &c. did then and there, to wit, on the said, &c. at, &c. in the great hall of pleas there, appear and was produced as a witness for and on the behalf of our said lord the king, against the said defendant T. P. otherwise called J. W. upon the trial of the said issue, and the said H. B. was then and there duly sworn, and did then and there take his corporal oath upon the Holy Gospel of God, as such witness as aforesaid, before the said E. Lord E. the chief justice aforesaid, that the evidence which he the said H. B. should give to the court and jury sworn between our said lord the king, and the said defendant, T. P., otherwise called J. W., should be the truth, the whole truth, and nothing but the truth; (the said E. Lord E. the chief justice aforesaid, then and there having competent authority to administer the said oath to the said H. B. in that behalf,) and the said H. B. being so sworn as aforesaid, it then and there, upon the trial of the said issue, became and was material to inquire whether the said

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(a) From the crown office, 46 Geo. 3. This was the indictment against Henry Britt, settled with great care by the late Mr. J. Dampier. The de-

fendant was convicted. See other forms, post, 460.—4 Wentw. 275. 6 Wentw. 396; and see ante, 302 to 318, as to the structure of the indictment.

T. P. otherwise called J. W. had voted at the last election of a knight to represent the county of Middlesex in parliament on the second day of that election, being the 24th day of July then last, in the name of J. W., and whether the said H. B. saw him the said T. P. otherwise called J. W. poll at such election on the second day of the said election, and whether the said H. B. was, &c. [*state the different material questions.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said H. B. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and minding and corruptly and maliciously intending, unlawfully, wilfully, and unjustly to injure and aggrieve the said T. P. otherwise called J. W. and to cause and procure him to be convicted of the wilful and corrupt perjury whereof he then stood indicted as aforesaid, and to subject him to the pains and penalties by the laws of this realm inflicted on persons convicted of that crime, then and there, to wit, on the trial of the said issue at the said sitting of nisi prius so holden as aforesaid, upon his oath aforesaid, before the said E. Lord E. the chief justice aforesaid, then and there having such competent authority to administer the said oath as aforesaid, falsely, wickedly, maliciously, knowingly, wilfully, and corruptly did say, depose, swear, and give evidence, amongst other things, in substance and to the effect following, that is to say, that the said T. P. otherwise called J. W. voted at the said election on the second day of the said election in the name of J. W. and that he the said H. B. saw, &c. [*here set out the evidence,*] whereas in truth and in fact, the said T. P. otherwise called J. W. did not vote or poll at the said election on the second day of the said election in the name of J. W. &c. [*here assign the perjury.*] And so the jurors aforesaid, on their oath aforesaid do say, that the said H. B. then and there, to wit, at the said sitting of nisi prius holden as aforesaid, on, &c. at Westminster aforesaid, in the great hall of pleas there called Westminster-hall, at and upon the trial of the said issue, in open court upon his oath aforesaid, before the said E. Lord E. the chief justice aforesaid, then and there having such competent power to administer the said oath as aforesaid, in manner and form aforesaid, falsely, &c. [*as ante, 450.*]

Middlesex. That heretofore, to wit, on, &c. A.D. 1773, The like on a certain bill of indictment before then duly found against one trial at Westminster-hall of an

indictment for
perjury (a).

J. G. for wilful and corrupt perjury, whereto the said J. G. hath pleaded that he is not guilty of the premises in the said indictment mentioned, and whereon the issue was duly joined between our sovereign lord the king and the said J. G. duly came on to be tried, and was tried before W. Lord M. then and still being chief justice of our sovereign lord the now king, assigned to hold pleas before the king himself at W. in the said county of M. in the great hall of pleas there called Westminster-hall, according to the form of the statute in such case made and provided, by a jury of the country then and there sworn and charged to try the aforesaid indictment, upon which said trial, one W. J. late of, &c. on the said, &c. at, &c. aforesaid, was produced before the said chief justice as a witness on the part and behalf of the said J. G. the defendant in the aforesaid indictment, and was then and there upon the said trial of the said indictment as a witness on the part of the said J. G. sworn, and took his corporal oath upon the holy gospel of God, before the said chief justice, that the evidence which the said W. J. should give to the court then and there, and the said jury so then sworn as aforesaid, touching the matter then in question between our said lord the king and the said J. G. should be the truth, the whole truth, and nothing but the truth; (he the said chief justice then and there having full power and authority to administer an oath to the said W. J. in that behalf.) And the jurors, &c. further present, that on the said trial certain questions then and there arose and became and were material to the matters so in issue as aforesaid, to the tenor and purport following, to wit, whether a certain note in writing, commonly called a promissory note, made by one E. D. bearing date, &c. whereby the said E. D. promised to pay to the said J. G. or his order £210, two months after date for value received, was just then lent by the said E. D. to the said J. G. to accommodate the said J. G.; or whether the said note was just then given to the said J. G. for him to borrow of one A. S. the sum of money in the said note mentioned for the use of the said E. D. and also whether the said W. J. had ever passed by the surname of P.; and also whether W. J. had ever given a direction to the said E. D. for him to inquire for the said W. J. by the name of P.? And the jurors, &c. further present, that the said W. J. being so sworn as aforesaid, not having, &c. but

(a) See 4 Wentw. 278. 6 dent seems preferable, see Wentw. 396. The last prece- also ante, 302 to 318.

being moved and seduced, &c. and contriving and diabolically intending not only to elude, but also to subvert the laws and public justice of this kingdom, and unjustly to cause the said J. G. to be acquitted of the perjury whereof he stood indicted by the said indictment, and to subvert truth itself, he the said W. J. then and there, to wit, on the said, &c. at, &c. aforesaid, at the said trial of the said indictment, by his own act and consent upon his said oath before the said chief justice, (he the said chief justice then and there having such power and authority to administer the said oath to the said W. J. as aforesaid,) falsely, wilfully, maliciously, and corruptly did say, depose, swear, and give evidence, among other things, to the jurors of the aforesaid jury then and there sworn and charged to try the said indictment, that, &c. [*here state the matter sworn, the assignments of perjury, and the conclusion as ante, 453.*]

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That heretofore, to wit, at the Sittings holden at W., in the said county of M., in the great hall of pleas, there commonly called Westminster-hall, on, &c. before the right honorable W. earl of M., then lord chief justice of our said lord the king, assigned to hold pleas before the king himself, J. W. esq. being then and there associated unto him, according to the form of the statute in such case made and provided, a certain issue in due manner joined upon a certain bill of indictment, before that time preferred and found against S. F. late of, &c. in and by which said bill of indictment, he the said S. F. was charged and accused of having made an assault upon one J. S., with intent that detestable and sodomitical crime not to be named among Christians, called buggery, with the said J. S. feloniously to commit, did come on to be tried, and was tried in due form of law by a jury of the said county of M., duly sworn between our said lord the king and the said S. F. in that behalf; and upon the said trial T. S. late of, &c. being the said T. S. in the said indictment named, did then and there appear as a witness for and on the behalf of our said lord the king, and then and there before the said W. earl of M., the chief justice aforesaid, did take his corporal oath, and was then and there duly sworn upon the Holy Evangelists of God, that the evidence which he the said J. S. should give to the

The like on trial at Westminster-hall, and indictment for sodomitical practices (a)

(a) See 6 Wentw. 396. dent. See also notes, ante, 4 Wentw. 275. and ante, 452, 302 to 318. which seems the best prece-

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court and jury sworn between our said lord the king, and the said S. F., should be the truth, the whole truth, and nothing but the truth, (he the said W. earl of M., having a competent authority to administer an oath to the said J. S. in that behalf,) and it then and there upon the trial of the said indictment, became and was a material question, whether the said S. F. on the first day of May then last past, was at the house of him the said S. F. in S. street, in, &c. or not, and thereupon the said J. S. being so produced and sworn as aforesaid, devising, and wickedly and maliciously intending, to cause and procure a verdict to pass against the said S. F. on the trial of the said indictment, and not having, &c. but being moved and seduced, &c. then and there before the chief justice aforesaid, in the said court, did falsely, wilfully, and corruptly, and of his own proper act and consent, say, depose, swear, and give in evidence, amongst other things, to the said jurors of the said jury so sworn, between the said lord the king, and the said S. F. as aforesaid, that the said S. F. on the said, &c. then last past, did arrive in town, (meaning at the said house of him the said S. F., in S. street aforesaid,) about a quarter before eleven o'clock in the morning, and that the said S. F. then went on the stage of his play-house, and continued there for the space of an hour and an half, as nearly as he the said J. S. could remember; whereas in truth and in fact the said S. F. on the said first day of May then last past, did not arrive at his said house in S. street aforesaid, nor was at his said house in S. street aforesaid, at any time on that day: and whereas in truth and in fact the said S. F. did not, on the said, &c. then last past, go on the stage of his play-house. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S., at and upon the said trial of the said indictment, on the said twenty-ninth of November, in the seventeenth year of the reign of our said present sovereign lord the king at W. aforesaid, in the county aforesaid, before the said W. earl of M., the chief justice aforesaid (he the said chief justice then and there having a competent authority to administer the said oath to the said J. S. as aforesaid,) by his own proper act and consent, in manner and form aforesaid, did falsely, wilfully and corruptly, upon his oath aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king, and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, &c.* that on the said trial of the aforesaid indictment, he the said J. S. being so

Second count.

produced and sworn as aforesaid, and devising, and wickedly, and maliciously intending to hurt, injure, and prejudice the said S. F., and to cause and procure a verdict to pass against the said S. F. on the said trial of the said indictment, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, before the chief justice aforesaid, in the said court did falsely, wilfully, corruptly, and of his own proper act and consent, say, depose, and swear, and give in evidence, amongst other things, to the said jurors of the said jury so sworn, between the said lord the king, and the said S. F. as aforesaid, in substance as aforesaid, (*i. e.*) that the said S. F., on the said first day of May then last past, at the house of him the said S. F. in S. street aforesaid, caught hold of him the said J. S. round the waist, and got shoving up against the said J. S. [*stating the evidence.*] whereas in truth and in fact, the said S. F. did not, &c. And so, &c. [*conclude us in first count.*]

Kent. That heretofore, to wit, in Hilary Term, in the 41st year, &c. Sir J. M. then attorney-general of our said lord the king, brought into the court of our said lord the king, before the king himself at W., in the county of M., a certain information against J. R. late of, &c. W. H. late of, &c. and in and by the said information, then and there gave the said court to understand, and be informed, amongst other things, in substance as follows, to wit, that on, &c. [*here set out the information for assaulting excise officers, and rescuing smuggled goods,*] upon which said information such proceedings were had in the said court of our said lord the king, before the king himself at W. aforesaid, that issue was in due manner joined between our said lord the king, and the said J. R. and W. H. which said issue upon the said information afterwards, to wit, at the assizes held at M., in and for the county of K. on, &c. before the right honorable L. Lord L. chief justice of our said lord the king, assigned to hold pleas before the king himself, and the honorable Sir N. G. knight, one of the justices of our said lord the king, assigned to hold pleas before the king himself, justices of our said lord the king, assigned to take the

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For perjury in giving evidence on trial of a criminal information at the assizes for Kent (a).

(a) This was from the crown office, being the indictment against George Gooding East, 42 Geo. 3. More of the preliminary proceedings seem to be stated than is necessary or advisable, see note, 300, 7, page 458, and ante, 452.

assizes for the said county of Kent, according to the form of the statute, in that case made and provided, in due form of law came on to be tried, and was then and there duly tried by a certain jury of the country in that behalf duly taken and sworn, upon which said trial one G. G. did then and there appear, and was produced as a witness for and in the behalf of the said W. H., and the said G. G. was then and there, to wit, on, &c. at Maidstone aforesaid, in the county aforesaid, in open court at the said assizes before the said L. Lord L., and Sir N. G. the justices above named, duly sworn, and did take his corporal oath on the holy gospels of God, as such witness as aforesaid, (they the said L. Lord L., and Sir N. G. then and there having competent authority to administer such oath to the said G. G. in that behalf,) and the said G. G. was then and there examined and gave evidence upon the said trial, as such witness as aforesaid, and upon such examination it then and there became and was material to inquire whether the said W. H. in the morning of the said 3d day of February, before 12 o'clock was present at a certain sheep-house, &c. [*here aver materiality of the evidence.*] And the jurors aforesaid, now here sworn and charged to inquire for our said lord the king, for the body of the said county of Kent, upon their oath aforesaid, do further present, that the said G. G. late of, &c. being so sworn as aforesaid, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving, devising, and intending to pervert the due course of justice, and wickedly, wrongfully, and unjustly to cause the said W. H. to be acquitted of the premises charged upon him in and by the said information then and there, to wit, on, &c. at, &c. in open court upon his said oath at the said assizes so held as aforesaid, before the said, &c. the justices above named at and upon the said trial and upon his examination, as such witness as aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly, did say, depose, swear, and give in evidence, (amongst other things) in substance and to the effect following, that is to say, that he the said G. G. was at the dwelling-house of the said W. H., &c. [*state the evidence,*] whereas in truth and in fact, the said W. H. was absent from his said dwelling-house, &c. And so the jurors, &c. [*as ante*, 368.]

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For perjury at
Chester assizes in
giving evidence

Cheshire. That at the court of session and gaol delivery of our sovereign lord the king, holden for the county of Chester,

at the castle of Chester, in the same county, on, &c. before the honorable J. M. his majesty's chief justice of and for the said county, and J. S. esq. his said majesty's other justice there (b), a certain indictment was found by the jurors then and there impanelled, sworn, and charged to inquire for our said lord the king, and the body of the said county, against one G. B. by the name and addition of, &c. labourer, for that, &c. [*here the indictment was set forth.*] And that the said G. B. being in due manner and form arraigned at the bar, in the said court of session upon the said indictment, before the said J. M. and J. S. justices as aforesaid, pleaded not guilty thereto, and issue being duly joined upon the said plea so pleaded, he the said G. B. was thereupon put upon his trial, and was in due manner tried at the said court of session, by a certain jury of the country duly sworn and taken between our said lord the king and the said G. B. in that behalf alleged, for the said felony in the said indictment alleged against him. And the jurors, &c. do further present, that at the said trial, so then and there had as aforesaid, J. S. late of S. in the said county of C. labourer, appeared as a witness for and on behalf of the said G. B. upon the said trial, and was sworn and took his corporal oath before the said J. M. and J. S. justices as aforesaid, on the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, of, upon, and concerning the premises aforesaid (c), (they the said J. M. and J. S. justices as aforesaid, then and there having sufficient and competent power and authority to administer an oath to the said J. S. in that behalf.) And the jurors, &c. do further present, that at and upon the said trial, it then and there became and was a material question, whether the said J. E. had ever said that he had been playing at cards with a parcel of men, and had lost a great deal of money; and that the said J. S. being

on the trial of a felon (a).

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(a) See form, Cro. C. C. 8th ed. 359. Cro. C. A. 310. 2 Stark. 508.

(b) According to the notes, ante, 307, 8, it is more judicious from this part of the indictment to proceed as follows, "one G. B. was in due form of law tried upon a certain indictment then and there depending against him for having

on, &c. feloniously, &c. (stating substance of indictment,) and that at the said trial so then and there had as aforesaid, J. S. late of, &c. appeared as a witness, &c." and see form, post.

(c) Or in the modern form, "the said matter then depending."

so sworn as aforesaid, not having, &c. but being moved and seduced, &c. and wickedly contriving and intending to cause the said G. B. unjustly to be acquitted of the said felony, did then and there, upon the said trial, knowingly, falsely, corruptly, wilfully, and maliciously, say, depose, and give in evidence to the jurors of the said jury, so taken between our said lord the king, and the said G. B. as aforesaid, before the said J. M. and J. S. justices as aforesaid, among other things, as follows, that is to say, that, &c. [*here state the matter sworn, with assignment of perjury, as usual. See Cro. C. C. 8th edit. 359. Cro. C. A. 310. 2 Stark. 512, n. g. and conclude as follows.*] And so the jurors aforesaid, now here sworn, upon their oath aforesaid, do say that the said J. S. at the said court of session and gaol delivery of our sovereign lord the king, holden at the castle of Chester aforesaid, in and for the said county of Chester, before the said J. M. and J. S. then being such justices as aforesaid, (and then and there having sufficient and competent power and authority to administer the said oath to the said J. S.,) did, in manner and form aforesaid, commit wilful and corrupt perjury, against the peace, &c. [*as ante, 368.*]

For perjury on a trial of a prisoner at the Admiralty sessions, for murder (a).

That at the session of oyer and terminer, &c. holden for the jurisdiction of the admiralty, &c. at justice hall, &c. on, &c. before Sir J. M. knight, Sir W. H. A. knight, Sir B. H. knight, J. F., J. N., J. H. A., M. S., J. D., and others, their fellows, justices of our said lord the king, assigned by letters patent to them the said Sir J. M., Sir W. H. A. (and the others before named) and others, and any four of them, under his great seal of Great Britain directed, of which number the will and pleasure of our said lord the king was, that the said Sir J. M., Sir W. H. A., Sir B. H., J. F., J. N., J. H. A., M. S., and J. D., amongst others in the said letters patent named, should always be one (b) to inquire, &c. and to hear and determine, &c. one J. K. was in due form of law tried upon a certain indictment then and there depending against

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(a) This indictment was holden sufficient, 5 T. R. 311. See form of Admiralty Commission, post, last vol.

(b) The court will take this

to mean, that if either of the persons named of the quorum were present it would suffice, 5 T. R. 318.

him, (a) by the name and description of J. K., &c., by a certain jury of the country, duly taken and sworn between our said lord the king, and the said J. K. in that behalf, for that, &c. [*setting forth the indictment of J. K. for murder on the high seas.*] And the jurors, &c. do further present, that T. D. late of, &c. at and upon the said trial of the said J. H. on the said, &c. at, &c. aforesaid, in open court, at the said session, before the said justices of our said lord the king above named, did appear as witness for and in behalf of our said lord the king, against the said J. K., and he the said T. D. did then and there in open court, aforesaid, &c. before the said justices, having then and there sufficient and competent power and authority to administer the said oath, &c. [*then state the whole evidence given upon the trial of J. K. referring to the manner of the death, &c. and then proceed.*] And the jurors aforesaid, do further present, that at and upon the said trial, it then and there became and was made a material question, whether the said defendant had ever said that he would be revenged of the said J. K., and would work his the said J. K.'s ruin. [*Then set forth the perjury, the assignments of its falsity, and conclude as usual.*]

Middlesex. That at the general quarter sessions of the peace of our lord the king, holden in and for the liberty of the dean and chapter of the collegiate church of St. P., W., in the city, borough, and town of W., in the county of M., and St. M. Le G., L., at the guildhall in K. street, W., on, &c. before W. M., C. C., H. D., esquires, and others, their fellows justices of our said lord the king, assigned, &c. [*as ante*, 182,] a certain indictment then depending in the said court against A. B. and C. D. came on to be tried, and was then and there, in due form of law tried by a certain jury of the county, in due manner sworn and taken for that purpose, in and by which said indictment it was charged and alleged, that, &c. [*here set forth the indictment for an assault.*] And the jurors, &c. do further present, that at and upon the trial of

For perjury on a trial at the Westminster sessions (b).

(c) This and the following averments are sufficient allegations that the perjury was committed on the trial of J. K. for murder, and that thereon the question on which the perjury is assigned became ma-

terial, 5 T. R. 319, 20.

(b) This was framed against S. Rickwood, by an eminent crown lawyer. See *ante*, 452, and 458, n. (b). also *ante*, 302 to 318.

the said indictment, one E. F., late of, &c. did then and there appear and was produced as a witness, for and on behalf of the said A. B. and C. D.; and the said E. F. was then and there in open court at the general quarter sessions of the peace aforesaid, duly sworn, and did take her corporal oath upon the holy gospel of God as such witness as aforesaid, (the said court then and there having sufficient and competent power and authority to administer an oath to the said E. F. in that behalf,) and then and there upon the trial of the said indictment it became and was material to inquire, whether on the said, &c. one G. H. came to the door of the said A. B. and C. D. about three o'clock in the afternoon, and spoke to any ladies in a carriage, and asked them whether they would have any thing to do with perjured Jews? and whether, when the said E. F. came to the door, the said G. H. ran into the toy shop and hid himself? And, whether the said G. H. came again to the house of the said A. B. and C. D. between nine and ten o'clock in the evening of the same day, and called them perjured Jews, saying, at number 27, lives perjured Jews, and they will stand in the pillory next week. And whether the said E. F. was a disinterested witness or not, and whether she had left the service of the said A. B. a month, all but a few days, before the said trial. And whether it was in consequence of her mother's illness that she had left her said service. And whether she was then going to return to the service of the said A. B. or any other service. And whether the said E. F. ever heard I. K. the elder, the father of the said G. H. authorize his children to call the said A. B. and C. D. perjured Jews. And thereupon the said E. F. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and devising, and wickedly contriving and intending to injure and aggrieve the said G. H., and to pervert truth and justice, and wrongfully and unjustly, as much as in her lay, to cause and procure the said A. B. and C. D. to be acquitted of the premises in the indictment aforesaid, above specified and charged on them, then and there, to wit, on the said, &c. at, &c. at and upon her examination as such witness as aforesaid, upon the said trial in open court at the general quarter session of the peace, holden as aforesaid, upon her oath aforesaid, the said court then and there having such competent power and authority as aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and give evidence, in substance and to the effect following, that is to say, That on the said, &c. the said G. H. came to the door

of the said A. B. and C. D. about three o'clock in the afternoon, and spoke to some ladies in a carriage, and asked them whether they would have any thing to do with perjured Jews, and that when she the said E. F. came to the door, the said G. H. ran into the toy shop, and hid himself, and that the said G. H. came again to the house of the said A. B. and C. D. between nine and ten o'clock in the evening of the same day, and called them perjured Jews, saying, at number 27, lives perjured Jews, and they will stand in the pillory next week, and that she the said E. F. had left the service of the said A. B. and C. D. a month all but a few days before the said trial, and that it was in consequence of her mother's illness that she left her said service, and that she was not going to return to the service of the said A. B. or to any other service. And also, that she the said E. F. had heard I. K. the elder, the father of the said G. H. authorize his children, both sons and daughters, when they were altogether, to call the said A. B. and C. D. perjured Jews. Whereas, in truth and in fact, on the said, &c. the said G. H. did not come to the door of the said A. B. and C. D. about three o'clock in the afternoon, and speak to some ladies in a carriage, and ask them whether they would have any thing to do with perjured Jews. And whereas, in truth and in fact, when the said E. F. came to the door, the said G. H. did not run into the shop and hide himself. And whereas, in truth and in fact, the said G. H. did not come again to the house of the said A. B. and C. D. between nine and ten o'clock in the evening of the same day, and call them perjured Jews, saying, at number 27, lives perjured Jews, and they will stand in the pillory next week. And whereas, in truth and in fact, the said E. F. had not left the service of the said A. B. a month all but a few days before the said trial, nor had she really left the said service, in consequence of the illness of her mother. And whereas, in truth and in fact, the said E. F. was going to return to the service of the said A. B. and did return thereto the same day she was so sworn as aforesaid, after the said trial. And whereas, in truth and in fact, she the said E. F. never did hear the said I. K. the elder, the father of the said G. H. authorize his children, or any of them, to call the said A. B. and C. D. or either of them, perjured Jews. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said E. F. on the said, &c. at the said parish of St. M. in the liberty of W., in the county of M., in open court, at and upon her examination as such witness as aforesaid, upon the

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said trial, at the said general quarter session of the peace so holden as aforesaid, upon her oath aforesaid, the said court then and there having such competent power and authority as aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the evil example of all other persons, to the great damage of the said D. S. and against the peace of our said lord the king, his crown and dignity.

For perjury in giving evidence on the trial of an indictment for an assault at an adjourned sessions for Surrey (a).

That at the general quarter sessions of the peace of our said lord the king, holden by adjournment for the county of S. at the New Sessions House, situate in H. lane, in the parish of, &c. in the county of S. on, &c. before, &c. then justices of our said lord the king, assigned, &c. [*as ante*, 182,] J. C. was, in due form of law, tried by a certain jury of the said county, then and there duly sworn and taken between our said lord the king, and the said J. C. upon a certain indictment then and there depending against him the said J. C. for a certain trespass and assault charged therein to have been committed by the said J. C. upon J. P. And the jurors aforesaid, now here sworn upon their oath aforesaid, do further present, that on the trial aforesaid, the said J. P. late of the parish aforesaid, labourer, did appear as a witness for and on behalf of our said lord the king, against the said J. C. in support of the said indictment, and that he the said J. P. did then and there, in open court at the said Sessions House, before the said justices of our said lord the king, to wit, at, &c. aforesaid, take his corporal oath, and was duly sworn upon the holy gospel of God to speak the truth, the whole truth, and nothing but the truth, touching and concerning the premises aforesaid, (they the said justices then and there having sufficient and competent power and authority to administer the said oath to the said J. P.) and that the said J. P. being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly devising and intending to pervert the due course of law and justice, and to cause the said J. C. to be unjustly convicted of the trespass and assault charged against him, in and by the said indictment, did then and there, to wit, on, &c.

(a) This by the favour of a barrister.

at, &c. before the said justices of our said lord the king, in open court, at the said Sessions House, falsely, knowingly, wickedly, wilfully, and corruptly, by his own act and consent say, depose, and give in evidence, to the jurors of the said jury, so sworn and taken, between our said lord the king, and the said J. C. as aforesaid, that he the said J. C. on, &c. then last, about ten o'clock at night, at the house of him the said J. C. had struck the said J. P. and given him two black eyes, and otherwise much bruised him, and knocked out one of his teeth, and said, "damn him, grapple him, and throat him." Whereas in truth and in fact, the said J. C. had not struck the said J. P. on the said, &c. then last, or at any other time whatsoever; and whereas in truth and in fact, the said J. C. had not given the said J. P. two black eyes, or otherwise bruised him; and whereas in truth and in fact, the said J. C. had not knocked out one of the said J. P.'s teeth; and whereas in truth and in fact, the said J. C. had not said, "damn him, grapple him, or throat him," or made use of any words to that or the like effect. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. P. at and upon the said trial, to wit, on, &c. aforesaid, at, &c. before the said justices of our said lord the king, (they the said justices, then and there having, &c.) did, in manner and form aforesaid, commit wilful and corrupt perjury, to the great displeasure, &c. to the evil example, &c. and against the peace, &c.

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That at the general quarter sessions of the peace of our lord the now king, holden at Pontefract, in and for the West Riding of the county of York, on, &c. before G. H. &c. justices of our said lord the king, assigned to keep the peace of our said lord the king, in the West Riding of the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the riding aforesaid, one C. D. was in due form of law tried upon an indictment, then and there depending against him for felony, to wit, grand larceny, and that A. B. late of, &c. labourer, did then and there take his corporal oath before the said justices, upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, concerning the matter then depending, the said justices then and there having competent power and authority to

For perjury committed on a trial for grand larceny at the quarter sessions for the West Riding of Yorkshire (a).

(a) See the precedents, ante, 452 to 464, and 2 Stark. 526.

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administer the said oath to the said A. B.; and that it then and there became and was a material question upon the trial of the said C. D. whether he the said A. B. did, or did not, on, &c. for and on the behalf of the said C. D. offer to one E. F. the prosecutor of the said indictment, the sum of ten shillings, to make up the prosecution, and that the said A. B. being duly sworn as aforesaid, did then and there falsely, corruptly, wilfully, and maliciously say, depose, and give in evidence, before the said justices, that he the said A. B. did not, on the — day of —, for and on the behalf of the said C. D. offer to give the sum of — to the said E. F. to make up the prosecution for the said felony with which the said C. D. was so charged as aforesaid; whereas in truth and in fact, the said A. B. did, on the said —, at, &c. aforesaid, offer, on behalf of the said C. D. to give the sum of ten shillings to the said E. F. to make up the prosecution for the said felony. And so the jurors aforesaid, now here sworn and charged to inquire for our said lord the king, for the body of the said county, upon their oath aforesaid, do say, that the said A. B. at the said general quarter sessions of the peace, so holden at Pontefract aforesaid, in and for the said West Riding of the county aforesaid, before the said justices, did, in manner and form aforesaid, commit wilful and corrupt perjury, [*as ante*, 464, &c.]

For perjury in giving evidence on the trial of an issue on an indictment for an assault before the mayor, recorder, &c. at the sessions in Guildhall, London (a).

That at the general quarter session of the peace of our lord the now king, holden for the city of London, at the Guildhall of and within the said city, on, &c. before J. W. esq. mayor of the said city; T. G. esq. serjeant at law, recorder of the said city; W. P. and J. H. esqrs. two of the aldermen of the said city, and others their fellows, justices of our said lord the king assigned, &c. [*as ante*, 182] one C. D. by the name and addition of, &c. was in due form of law tried upon a certain indictment, then and there depending against him by a certain jury of the country, then and there duly sworn, and taken between our said lord the king, and the said C. D. in that behalf, for that he the said E. F. on, &c. [*Here recite the indictment which in this case was for a common assault.*] And the jurors, &c. do further present, that upon the trial aforesaid, A. B. late of, &c. did then and there appear as a witness for and on

behalf of our said lord the king against the said C. D., and that he the said A. B. did then and there in open court, within the Guildhall aforesaid, before the said justices of our said lord the king above named, take his corporal oath, and was duly sworn upon the holy gospel of God to speak the truth, the whole truth, and nothing but the truth, touching and concerning the premises aforesaid (they the said justices then and there having sufficient and competent power and authority to administer the said oath to the said A. B.) And the jurors, &c. do further present, that at and upon the said trial certain questions then and there became and were material, that is to say, whether [*here set out the questions upon the answers to which perjury is meant to be assigned*] and that the said A. B. being so sworn as aforesaid not having, &c. but being moved and seduced, &c. and wickedly devising and intending to pervert the due course of law and justice, and to cause the said C. D. to be unjustly convicted of the trespass and assault charged and supposed against him, in and by the said indictments, did then and there, to wit, on, &c. that is to say, at the parish of Saint Michael Bassishaw, in the ward of Bassishaw in London aforesaid, upon the said trial before the said justices of our said lord the king in open court within the Guildhall aforesaid upon his oath aforesaid, falsely, knowingly, wickedly, wilfully, and corruptly, by his own act and consent, say, depose, and give in evidence among other things to the jurors of the said jury of the country, so sworn and taken between our said lord the king and the said H. W. as aforesaid, in substance and to the effect following, that is to say, that on, &c. [*here set out so much of the evidence as can be proved to be false, and the averments to falsify*] and so, &c. [*as ante*, 464, 5.]

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That A. B. late of, &c. single woman, on, &c. at, &c. in her proper person came before J. C. and R. S. esqrs., then being two of the justices of our sovereign lord the king, assigned, &c. [*as ante*, 182] and then and there having sufficient and competent power and authority to administer the oath and take her examination hereinafter mentioned (one of whom, to wit, the said R. S. then was of the quorum)(*b*), and then and

For perjury upon hearing of an appeal at a quarter sessions, against an order of adjudication of bastardy made by two justices of the peace(*a*).

(*a*) Cro. C. C. 8th ed. 334. 7th ed. 574. legation will not vitiate, see ante, 307, and 26 Geo. 2. c. 27.

(*b*) The omission of this al-

there the said A. B. was sworn and took her corporal oath before the said J. C. and R. S. on the holy gospel of God, and then and there upon her oath aforesaid, did say, depose, swear, and give her examination in writing (amongst other things) in substance and to the effect following, that is to say, that on or about the, &c. she the said A. B. was delivered of a female bastard child, in the said, &c. and that C. D. of, &c. was the father of the said bastard child, and that the said bastard child had been chargeable to the parish of O. and was likely so to continue, and that the charge and expence of her lying-in was paid by the churchwardens and overseers of the poor of the said parish of O. or some or one of them, she being unable to maintain herself, as by the said examination (amongst other things), relation being thereunto had, doth and may more fully appear; whereupon they the said J. C. and R. S. the justices aforesaid, pursuant to the statute in such case made and provided, afterwards, to wit, on the same, &c. at, &c. aforesaid, by a certain order under their hands and seals duly made, bearing date the same day and year last mentioned, did adjudge the said C. D. of, &c. to be the putative father of the said bastard child, and that as well for the relief of the same parish of O. in part, as also for the provision and maintenance of the said bastard child, he the said C. D. should weekly and every week from, &c. [*set out the order*] as by the same order, reference being thereunto had, doth and may more fully appear, of which said order the said F. P. afterwards, to wit, on, &c. at, &c. aforesaid, had notice. And the jurors, &c. do further present, that afterwards, to wit, at the general quarter session of the peace of our sovereign lord the king, holden at, &c. in and for the said county of, &c. on, &c. being the next general sessions of the peace holden in and for the said county of, &c. before Sir J. M. baronet, &c. esquires, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] the said C. D. did then and there in due form of law, appeal to the said court of general quarter session of the peace, against the said order of adjudication made by the said J. C. and R. S. the two justices first above named, in manner and form as aforesaid; and afterwards, to wit, at the same general quarter session of the peace of our said lord the king, holden, at, &c. aforesaid, in and for the county of, &c. by adjournment on, &c. before the said Sir J. M. &c. and others their fellows, justices as aforesaid, the said appeal came on to be heard, and then and there was heard before the justices of our said lord the king last named,

and others their fellows aforesaid, and the said A. B. then and there was sworn and took her corporal oath before the same last named justices, on the Holy Gospel of God, to speak the truth, the whole truth, and nothing but the truth, before the said justices, of and upon the premises aforesaid (they the said justices last named respectively then and there having sufficient and competent power and authority to administer an oath to the said A. B. in that behalf), and that the said A. B. not having, &c. but being moved and seduced, &c. and wickedly and maliciously contriving and intending not only to deprive the said C. D. of his good name, fame, credit, and reputation, but also falsely to charge the said C. D. with begetting her with child, then and there, to wit, on the said, &c. at, &c. aforesaid, did falsely, wickedly, wilfully, maliciously, and corruptly, on her oath aforesaid, before the said justices of our said lord the king last above named, and others their fellows aforesaid, say, depose, swear, and give evidence upon the hearing of the said appeal (amongst other things) in substance and to the effect following, that is to say, that the said C. D. begot her the said A. B. with child at his own house (meaning the house of the said C. D. situate, &c.) in the lower room of the said house, upon a bed that was in the said room in the month of February, one thousand seven hundred and eighty (meaning the month of February, in the year of our Lord one thousand seven hundred and eighty); whereas in truth and in fact the said C. D. did not beget the said A. B. with child, at his own house at L. in the lower room of the said house, or in any room or place in the said house of the said C. D. or in any other place whatsoever; and whereas in truth and in fact there was not then, to wit, in the said month of February, one thousand seven hundred and eighty, any bed whatsoever in any lower room of or in the said house of him the said C. D.; and whereas in truth and in fact, the said C. D. never had carnal knowledge of the body of the said A. B. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. on, &c. aforesaid, at, &c. aforesaid, before the same justices last above named, and others their fellows aforesaid (so as aforesaid having sufficient and competent power and authority to administer the said oath to the said A. B.) by her own act and consent, and of her own most wicked and corrupt mind and disposition in manner and form aforesaid, did falsely, wickedly, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the evil and pernicious example of all

others, to the great damage of the said C. D. and against the peace, &c.

For perjury by a witness on hearing an appeal at Clerkenwell, against a conviction on the pawnbroker's act (a).

That at the general quarter sessions of the peace of our lord the king, holden in and for the county of M. at the session-house on Clerkenwell Green, in the said county, by adjournment, on, &c. before W. M. &c. esquires, and others their fellows, justices of our said lord the king, assigned, &c. [*as ante*, 182,] a certain appeal in due form of law made to the said county, by C. D. of, &c. pawnbroker, against a certain conviction made on, &c. by E. F. esquire, one of the justices of our said lord the king, assigned, &c. for a supposed offence committed by the said C. D. against a certain act of parliament made and passed in the thirty-sixth year of the reign of our said lord the king, intituled, &c. in due form of law came on to be heard, and then and there, to wit, on the said, &c. at, &c. at the said session so holden as aforesaid, in due form of law was heard by and before the said court, and that upon the said hearing of the said appeal, A. B. late of, &c. was produced and did appear as a witness to support the said conviction, and then and there, in open court, at the said session so holden as aforesaid, was duly sworn and did take her corporal oath upon the Holy Gospel of God, the said court then and there having competent power and authority to administer an oath to the said A. B. in that behalf, and the said A. B. was then and there examined, and gave evidence as such witness as aforesaid, and upon such examination of the said A. B. it then and there became and was material to inquire whether the said A. B. had torn a piece of paper from a certain other piece of paper annexed to a certain ticket, then and there produced to the said court by the said A. B. and whether the said A. B. had seen the said piece of paper annexed to the said ticket in any other state than in the state she so produced the same to the said court, and whether she the said A. B. knew that any other paper had been annexed to the said ticket so produced as aforesaid, than the piece of paper annexed to the said ticket at the time she so produced the same to the said court as aforesaid, and whether she the said A. B. produced to the said E. F. at the time of making the said conviction, any copy or any paper as and for a copy of a

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(a) On this indictment defendant was convicted. The indictment was framed by a

very eminent crown lawyer, see notes, ante, 302 to 318.

certain ticket or memorandum of a piece of linen having been pawned with the said C. D. and that the said A. B. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and having no regard for the laws and statutes of this realm, nor fearing the pains and punishments therein contained, and unlawfully, wickedly, and maliciously devising, contriving, and intending to prevent the due course of law and justice, and to injure, oppress, and impoverish the said C. D. then and there, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in open court, at the said session so holden as aforesaid, at and upon the hearing of the said appeal unlawfully, wickedly, wilfully, maliciously, falsely, and corruptly, of her own act and consent, upon her oath aforesaid, did say, depose, swear, and give evidence to the said court in substance and to the effect following, that is to say, that she the said A. B. had not torn a piece of paper from the said piece of paper annexed to the said ticket so produced to the said court by the said A. B. as aforesaid, that she the said A. B. had never seen the piece of paper annexed to the said ticket so produced as aforesaid, in any other state or condition than in the state and condition she so produced the same to the said court as aforesaid; that she the said A. B. did not know that any other piece of paper had been annexed to the said ticket than the piece of paper annexed to the said ticket when she so produced the same as aforesaid, and that she the said A. B. did not produce to the said C. D. at the time of making the said conviction, any copy or paper as a copy of a ticket or memorandum of a piece of linen having been pawned to the said C. D.; whereas, in truth and in fact, she the said A. B. at the time she so gave evidence as aforesaid, had torn a piece of paper from the said piece of paper annexed to the said ticket so produced to the said court by the said A. B. as aforesaid; and whereas, in truth and in fact, the said A. B. at the time she so gave evidence as aforesaid, had seen and well knew the said piece of paper annexed to the said ticket so produced as aforesaid, to have been in another and different state and condition than in the said state and condition she so produced the same to the said court as aforesaid; and whereas, in truth and in fact, the said A. B. at the time she so gave evidence as aforesaid, well knew that another and larger piece of paper had been annexed to the said ticket, than the piece of paper annexed to the said ticket, when she so produced the same as aforesaid, &c. [*state here assignment of perjury in other matter last sworn.*] And so the jurors aforesaid, upon

their oath aforesaid, do say that the said A. B. then and there, to wit, on the said, &c. at, &c. aforesaid, in open court, at the said sessions so holden as aforesaid, upon the hearing of the said appeal, on her oath so taken as aforesaid (the said court then and there having competent power and authority to administer the said oath to the said A. B. in that behalf) unlawfully, &c. [*Conclude as ante*, 468.]

INDICTMENTS FOR PERJURY,—IN CRIMINAL PROCEEDINGS, AFTER TRIAL.

For perjury in an affidavit in K. B. in mitigation of punishment after conviction (a).

That heretofore, to wit, in — term, in, &c. a certain indictment then before in due manner found against one T. E. by the name and description of T. E. late of, &c. was depending in the court of our said lord the king, before the king himself, at Westminster, and that in and by the said indictment it was charged that the said T. E. late of, &c. [*set out the indictment, which, in this case, was for having naval stores in possession without authority*], and the jurors, &c. do further present, that such proceedings were thereupon had, that a certain issue joined on the said indictment between J. T. esq. coroner and attorney of our said lord the king, in the court of our said lord the king, before the king himself, who for our said lord the king in that behalf prosecuted, and the said T. E. in the same court afterwards, to wit, on, &c. at, &c. before Sir W. H. A. knt. one of the justices of our said lord the king assigned to hold pleas before the king himself, and Sir B. H. knt. one of the barons of our said lord the king of his court of Exchequer, came on to be tried, and then and there was tried by a certain jury of the country in that behalf duly taken, and the said T. E. was then and there convicted and found guilty by the said jury of the premises in the said indictment, specified and charged upon him in manner and form as in and by the said indictment, it was alleged against him, and the jurors, &c. do further present, that R. P. late of, &c. being a wicked and evil-disposed person, and unlawfully and unjustly contriving and intending, contrary to truth and justice, to induce and cause the said court of our said lord the king, before the king himself, at Westminster, to mitigate the punishment of him the said T. E.

(a) This was the indictment the crown office, see 4 Wentw. against Roger Prout, in K. B. 260, and notes, ante, 302 to Trinity Term, 35 Geo. 3, from 318.

for his offences aforesaid, and to defeat the ends of justice, afterwards, to wit, on, &c. at, &c. in his own proper person, appeared before Sir N. G. knight, then and yet being one of the justices of our said lord the king, assigned to hold pleas, before the king himself, and the said R. P. then and there was sworn and took his corporal oath upon the holy gospel of God before the said Sir N. G. (he the said Sir N. G. then and there having sufficient power and competent authority to administer an oath to the said R. P. in that behalf,) and that the said R. P. being so sworn, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and unlawfully and unjustly contriving and intending as aforesaid, on the said, &c. at, &c. aforesaid, before the said Sir N. G. upon his oath aforesaid, did falsely, maliciously, wickedly, wilfully, and corruptly say, depose, swear, and make affidavit in writing, to be exhibited and read, and which afterwards, to wit, on, &c. was exhibited and read in the said court of our said lord the king, before the king himself, at Westminster, when he the said T. E. was brought into the said court to hear and receive the judgment of the said court for his offences aforesaid, amongst other things, in substance and to the effect following, that is to say, &c. [*here set out the affidavit, with innuendoes,*] whereas, in truth and in fact, &c. [*assign the perjury as usual.*] And so the jurors, &c. do say, that the said R. P. on the said, &c. at, &c. aforesaid, upon his oath aforesaid, before the said Sir N. G. (he the said Sir N. G. then and there having competent and sufficient power and authority to administer the said oath to the said R. P. in that behalf as aforesaid,) did falsely, maliciously, wickedly, wilfully, and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, to the great perversion of public justice, to the evil example of all other persons, and against the peace, &c.

Middlesex. That heretofore, that is to say, on, &c. at, &c. in, &c. before the right honorable W. Lord M. chief justice of our lord the king, assigned to hold pleas before the king himself, and Sir S. S. S. knight, lord chief baron of his majesty's court of Exchequer, justices of our said lord the king, assigned to hold the assizes in and for the county of Surrey aforesaid, a certain bill of indictment before them duly found

For perjury in an affidavit made in the court of K.B. relative to the removal of a nuisance in the river Thames, for which defendant had been indicted and convicted at the assizes (a).

(a) See 4 Wentw. 260. See last precedent and notes, ante, 302 to 318.

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against W. G. late of, &c. by the name and addition of W. G. late of, &c. for unlawfully erecting and continuing a certain nuisance, to wit, certain ledges and dams in and across a certain navigable river, being the king's common highway at Richmond, in the parish of, &c. in, &c. called the river Thames, otherwise the Thames, used for all the king's subjects with their barges, boats, and other vessels to navigate, sail, pass, and repass in and along the same at their will and pleasure, whereto the said W. G. had pleaded that he was not guilty of the premises in the said indictment contained, and whereon the issue was duly joined between our sovereign lord the king and the said W. G. and the said W. G. came on to be tried and was tried, and the said W. G. was then and there, to wit, on, &c. before the justices aforesaid, in due manner, and according to due course of law, by a jury of the said county of S. found guilty of the premises in the said indictment specified and charged upon him in manner and form as by the said indictment was alleged against him : and the jurors aforesaid now here charged and sworn to inquire in form aforesaid upon their oath aforesaid, do further present, that after the conviction of the said W. G. and before the said court of our said lord the king, before the king himself, had passed any judgment upon the said W. G. for the offence whereof he had been so convicted, to wit, on, &c. the said W. G. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving and diabolically intending not only to elude, but also to subvert the laws and public justice of this kingdom, and to avert the truth itself, came personally into the said court of our said lord the king, before the king himself, (the said court then and still being held at W. in the said county of Middlesex,) and took his corporal oath on the holy gospel of God before the said court, the same being then and still held at W. in the said county of Middlesex, in the great hall of pleas there, called Westminster-hall, the said court then and there having full power and authority to administer an oath to the said W. G. in that behalf, and then and there, to wit, on, &c. in the said court of our said lord the king, before the king himself, (the said court then and still being held at, &c.) by his own act and consent upon his said oath, before the said court, (the said court then and there having such full power and authority to administer an oath to the said W. G. as aforesaid,) falsely, wilfully, maliciously, and corruptly did say, depose, swear, and make affidavit in writing, which said affidavit is entitled as follows, to wit : In the King's

Bench, the King *versus* G. &c. and was made by the said W. G. by which said affidavit the said W. G. did (amongst other things) falsely, &c. say, &c. as followeth, that is to say, and first this deponent, W. G. (meaning himself the said W. G.) having, &c. [*here state matter sworn, with proper innuendoes*] as by the said affidavit affiled of record in the said court of our said lord the king, before the king himself, here, to wit, at Westminster, in the said county of Middlesex, reference being thereunto had, will, among other things, fully appear, whereas in truth and in fact the said W. G. did not, in, &c. [*here assign the perjury as usual.*] And so the said now jurors for our said lord the now king, upon their oath aforesaid, say, that the said William, on, &c. in the said court of our said lord the king, before the king himself, (the said court then and still being held at Westminster, in the said county of Middlesex), before the said court (the said court then and there as aforesaid, having full power and authority to administer an oath to the said W. G. in that behalf), by, of, and through the said W. G. his own act and consent, in manner and form aforesaid, upon his oath aforesaid, falsely, &c. committed wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of the laws of this realm, to the wicked and evil example of all others, to the subversion of public justice and good government of this kingdom, and against the peace of our said lord the now king, his crown and dignity.

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INDICTMENTS FOR PERJURY, ON STATUTE,
5 ELIZ. c. 9.

West Riding of the } [*Commencement as ante, 1 & 2.*]
county of York, to wit.) That before and at the time of the being sworn, and taking the corporal oath as hereinafter mentioned, a certain cause in which Sir T. V. baronet, was the plaintiff, and W. S. was the defendant, was depending in suit and variance in the court of our lord the king, before the king himself, by action concerning damages. And the ju-

For perjury on 5 Eliz. c. 9, in an affidavit sworn before a commissioner in the country to increase costs against the defendant in a cause after verdict against him (a).

(a) This indictment was settled, A. D. 1816, by a very eminent barrister. See forms at common law, ante, 382, and notes as to the statute, ante, 344.

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rore, &c. do further present, that H. C. late of, &c. gentleman, being an evil-disposed person, and wickedly contriving and intending to aggrieve, injure, and prejudice the said W. S. the defendant in the aforesaid cause, and subject him to the payment of heavier costs, charges, and expences, than he of right was or otherwise would be liable to, on, &c. at Tadcaster aforesaid, in the West Riding aforesaid, came in his proper person, before J. C. gent. then and there being a commissioner duly authorized and empowered to take and receive affidavits in, touching and concerning matters and proceeding of, or in the court of our said lord the king, before the king himself; and that the said H. C. then and there, to wit, on the same day and year aforesaid, at, &c. was duly sworn, and did then and there take his corporal oath upon the holy gospel of God, before the said J. C. (he the said J. C. then and there having sufficient and competent power and authority to administer the said oath to the said H. C. in that behalf,) and that the said H. C. being so sworn as aforesaid, did falsely, maliciously, and wickedly, and by his own act, consent, and agreement, wilfully, and corruptly, then and there, before the said J. C. as such commissioner as aforesaid, depose, swear, and make affidavit in writing, of and concerning one H. C. then deceased, and of and concerning the attendance of the said H. C. deceased, in the said cause at the Lent assizes, holden at the Castle of York, in and for the county of York, in the year of our Lord 1815, amongst other things, as followeth, that is to say, that the said H. C. deceased, attended at the said assizes (meaning the said Lent assizes holden at the Castle of York as aforesaid,) as attorney, and material witness in this cause (meaning the cause above last mentioned,) twelve whole days, and had no other business at the said assizes, as by the said affidavit affiled in the said court of the said lord the king, before the king himself, to wit, at Westminster, in the county of Middlesex, amongst other things more fully appears; and whereas in truth and in fact, he the said H. C. deceased, did attend at the said assizes as attorney for the plaintiff in a certain other cause entered to be tried, and tried at the said assizes, in which cause one L. M. was the plaintiff, and one G. H. was the defendant, and as attorney for the plaintiff in a certain other cause entered to be tried, and tried at the said assizes, in which cause one S. T. was the plaintiff, and one I. K. the defendant; and whereas in truth and in fact, the said H. C. deceased, did attend at the said assizes as attorney, in divers, to wit, two other causes at the

said assizes; and whereas in truth and in fact, the said H. C. deceased, in the said affidavit named, had other business at the said assizes. And the said H. C. the now defendant, afterwards, to wit, on, &c. did, of his own act, consent, and agreement, wilfully and corruptly produce and use (a), and cause to be produced and used, the said affidavit upon the taxation of the costs of the said Sir T. V. in the said first-mentioned cause, in order to obtain the judgment of the said court for more costs in the said cause for the said Sir T. V. against the said W. S. than the said Sir T. V. was entitled to and would otherwise have obtained, to wit, at Westminster aforesaid. And the jurors, &c. do further present, that it became and was a material question upon the producing and using of the said affidavit in manner aforesaid, and also at the said time of swearing thereof as aforesaid, whether the said H. C. deceased, had other business at the said assizes besides the said first-mentioned cause or not. And so the jurors aforesaid, now here sworn upon their oath aforesaid, do say, that the said H. C. the now defendant, on the said 30th day of October, in the 56th year aforesaid, at Tadcaster aforesaid, in the West Riding aforesaid, before the said J. C. being such commissioner as aforesaid, then and there having such authority as aforesaid, of his own most wicked, malicious, and corrupt mind and disposition, and by his own act, consent, and agreement, in manner and form aforesaid, wilfully and corruptly did commit wilful and corrupt perjury, to the great damage of the said W. S. against the form of the statute in that case made and provided, (b) and against the peace of our said lord the king, his crown and dignity (c).

Defendant's
using the affi-
davit (a).

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(a) As to the materiality of this averment, see ante, 316.

(b) 5 Eliz. c. 9.

(c) The following advice was given as to the indictment and evidence. A copy either of the roll, or of the nisi prius record and postea in each of the causes mentioned in the indictment, should be examined with the roll or record by some person, who may prove the same before the grand jury, and at the trial, the original affidavit must be taken down, the hand writing of defendant's signature proved, the commissioner's com-

mission and his signature must also be proved, and the use made of the affidavit on the taxation of the costs. This indictment, if preferred at the sessions, must be an indictment upon the statute 5 Eliz. c. 9. because the sessions have no jurisdiction over an indictment for perjury at the common law. The fact of Mr. C. the father's attendance as attorney in the other causes should be proved, together with the notoriety of his doing so and defendant's knowledge thereof, so far as it can be done.

INDICTMENTS FOR SUBORNATION OF PERJURY.

Indictment for subornation of perjury for procuring a woman to swear a bastard child to one J. P. (a).

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Somersetshire, to wit. The jurors for our lord the king, upon their oath present, that one J. M. late of, &c. single woman, on, &c. at, &c. was pregnant with child, and that the said child was likely to be born a bastard, and to be chargeable to the said parish of K. aforesaid, in the county aforesaid. And the jurors aforesaid, upon their oath aforesaid, further present, that on, &c. aforesaid, at, &c. aforesaid, one W. B. late of, &c. yeoman, being a person of an evil mind and a wicked disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly and maliciously contriving, devising, and intending not only to deprive J. P. late of, &c. labourer, of his good name, fame, and reputation, and to put him to great trouble and expence, and also to cause the said J. P. to be falsely charged with begetting the said J. M. with child, and with being the father of the said child, with which the said J. M. was then and there pregnant, did falsely, corruptly, knowingly, wilfully, and wickedly solicit, suborn, and procure the said J. M. to go before one J. H. clerk (he the said J. H. then being one of the justices of our said lord the king, assigned, &c.) [*as ante*, 182,] and make oath that one J. P. of, &c. labourer, (meaning the said J. P.) was the father of the said child, with which she was so pregnant. And the jurors aforesaid, upon their oath aforesaid, do further present, that in consequence, and by the means, encouragement, and effect of the said wicked and corrupt subornation and procurement of the said W. B. she the said J. M. afterwards, to wit, on the said, &c. aforesaid, at, &c. aforesaid, did go in her proper person before the said J. H. being such justice as aforesaid, and then and there having sufficient power and authority to administer an oath and take the examination of the said J. M. hereinafter mentioned, and the said J. M. then and there was sworn, and took her corporal oath before the said J. H. on the holy gospel of God. And the said J. M. being so sworn

(a) 4 Wentw. 234; as to the law and indictment, *ante*, 317, 318. See other forms, Cro. C. A. 329. 2 Stark. 529. See form of indictment against a

woman for perjury, in filiating a child, *ante*, 438, 9; and indictments, for dissuading a witness from giving evidence, *ante*, 235.

as aforesaid, by the means and in consequence of the said wicked solicitation, subornation and procurement of the said W. B. did then and there, upon her oath aforesaid, before the said J. H. being such justice as aforesaid, falsely, wickedly, wilfully, and corruptly, say, depose, and swear, and give in her examination in writing as followeth:—County of Somerset; The voluntary examination of J. M. of K. in the said county; single woman, taken on oath before me J. H. one of his majesty's justices of the peace in and for the said county, this third day of November, who saith that she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of K. in the said county, and that J. P. of K. aforesaid, in the said county, labourer (meaning the said J. P.) is the father of the said child; as by the said examination, relation being thereunto had, may more fully and at large appear. Whereas in truth and in fact, the said W. B. at the time of soliciting, suborning, and procuring the said J. M. corruptly and falsely to swear as aforesaid, well knew that the said J. P. was not the father of the said child, with which she was so then pregnant as aforesaid.—And so the jurors aforesaid, upon their oath aforesaid, do say, that the said W. B. on the said, &c. aforesaid, at, &c. aforesaid, did, falsely, corruptly, knowingly, wilfully, and wickedly suborn and procure the said J. M. to commit wilful and corrupt perjury, in and by her oath aforesaid, before the said J. H. so then and there having lawful and competent authority to administer the said oath, to the great displeasure of Almighty God, in contempt of our said lord the king and his laws, to the evil and bad example of all others, and against the peace of our said lord the king, his crown and dignity.

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That A. B. late of, &c. labourer, being a wicked and evil-disposed person, and minding and intending great injury to one B. R. of the said parish, and unjustly to cause and procure him to be put to great charges and expence of his monies, and to give security for the maintenance of a child, of which one A. U. spinster, was on, &c. pregnant, and which, by the laws of this realm, was likely to be born a bastard, and to be chargeable to the said parish, did on, &c. aforesaid, at, &c. aforesaid, unlawfully and wickedly solicit, instigate, persuade, and procure

The like in another form (a).

(a) See Cro. C. A. 329. 2 Stark. 529.

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the said A. U. to go before one of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] and then and there take her corporal oath and swear, before such justice, that (a) the said B. R. was the father of such child; and that she the said A. U. did, in consequence of such solicitation, instigation, and persuasion, on, &c. at, &c. aforesaid, before such justice, charge the said B. R. with having lately before that time begotten upon the body of her the said A. U. a certain male child, which was afterwards born alive of the body of her the said A. U. a bastard; and that she the said A. U. was then and there before the said justice duly sworn, and did take her corporal oath upon the holy gospel of God, concerning the said premises (the said justice then and there having sufficient and competent power and authority to administer the said oath to the said A. U.) and that the said A. U. being so sworn as aforesaid, wickedly, and maliciously devising, and intending falsely and unjustly to charge and burthen the said B. R. with the maintenance and support of the said bastard child, and not only to draw him into great charges and expence of his monies, but also to bring him into great scandal, infamy, and disgrace, as a lewd and unchaste person, then and there upon her oath aforesaid, in a certain examination before the said justices, taken in writing in that behalf, did falsely, maliciously, wilfully, wickedly, and corruptly say, depose, and swear (amongst other things), in substance and to the effect following, that is to say, [*set out as much of the examination as can be proved to be false, and then proceed as follows.*] Whereas, in truth and in fact, he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said A. U. to make oath and swear as aforesaid, then and there, to wit, on, &c. at, &c. well knew that the said B. R. would be put to great charges and expence of his monies, if she the said A. U. should swear as aforesaid; and whereas in truth and in fact, he the said A. B. at the said time when he so endeavoured to persuade, solicit, and instigate the said A. U. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever, to suspect or imagine that the said B. R. was the father of such child, but on the contrary thereof, the said A. B. was then and there informed by the said A. U. that he the said A. B. was

(a) This statement may vary according to the facts, *as ante*, 438, 9.

the father of such child, of which she the said A. U. was so pregnant as aforesaid; and whereas in truth and in fact, she the said A. U. never told or informed him the said A. B. that the said B. R. was the father of such child; and whereas in truth and in fact he the said A. B. so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said A. U. to swear as aforesaid, in order that he the said A. B. might be exonerated, freed, and discharged from divers expences which might accrue to him, as being the father of such child, after the same should be born of the body of her the said A. U. against the peace of our said lord the king, his crown and dignity. [*Quære if the conclusion of the preceding precedent is not more correct.*]

That heretofore, to wit, at the session of oyer and terminer of our lord the king, holden at K. in the county of S. on, &c. before Sir R. E. knight, one of the justices of his majesty's Court of King's Bench, and Sir W. C. knight, then one of, &c. then justices of our said lord the king, assigned, &c. [*set out commission of oyer and terminer, as in last volume*] by the oath of H. V. esquire, &c. [*the names of the grand jury,*] good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said lord the king, for the body of the county aforesaid, it was presented in manner and form following, to wit, [*here set out the indictment.*] Wherefore the sheriff of the county aforesaid was commanded not to omit, for any liberty in his bailiwick, but to take the said C. D. to answer the premises, which said indictment the above named justices of our said lord the king, afterwards, to wit, at the delivery of the gaol of our said lord the king, holden for the said county of —, on the said, &c. before the aforesaid Sir R. E. knight, Sir W. C. knight, and others, their associates, then justices of our said lord the king assigned to deliver his said gaol of the prisoners therein, &c.; and afterwards, at the same delivery of the said gaol of our said lord the king, held for the county aforesaid, at, &c. aforesaid, in the said county, on the said, &c. before the said justices of our said lord the king, and other their associates aforesaid, came the said C. D. in the custody of T. C. esquire, sheriff of the county aforesaid, in whose custody in the said gaol for the cause

For subornation of perjury on trial of highway robbery where the prisoner set up an alibi (a).

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(a) See 4 Wentw. 250; and law, ante, 317, 18.

aforesaid, he had been before committed, being brought to the bar here in his proper person, who was committed to the said sheriff, and forthwith concerning the premises in the said indictment above specified and charged on him as above, being asked in what manner he would be tried, the said J. G. said he was not guilty thereof, and concerning which, for good and ill, he did put himself upon his country, upon which said issue, such proceedings were had, that afterwards, to wit, on the said delivery of the said gaol of our said lord the king, so held as aforesaid, a certain trial was held by a jury of the said county, taken between our said lord the king, and the said C. D. as by the record thereof doth more fully appear, upon which said trial evidence was given on behalf of our said lord the king, that the felony and robbery in the said indictment above specified, was committed by the said C. D. about half an hour after six in the afternoon, on the fourth day of June, in the eighth year, &c. And the jurors, &c. now here sworn and charged to inquire for our said lord the king, for the body of the said county of — , upon their oath aforesaid, do further present, that A. B. late of, &c. being a person of wicked and evil mind and disposition, and devising and intending as much as in him lay, to prevent the due course of law and justice, and to cause and procure the said C. D. to be entirely acquitted of the said felony and robbery charged on him, and by the said indictment to escape unpunished for the same, did, before the said trial, to wit, on, &c. at, &c., unlawfully, and wickedly solicit, incite, and endeavour to persuade one E. F. to appear as a witness on the said trial so as aforesaid had, for and on the behalf of the said C. D. and on the said trial falsely to depose, say, and give in evidence upon his oath, to the jury of the county aforesaid, that the said C. D. carried a suit of clothes on the fourth day of June last, (meaning the fourth day of June, in the eighth year, &c. the day on which the said felony and robbery in the said indictment above specified, were proved as aforesaid to have been committed) to the said C. D. at his lodgings (meaning the lodgings of him the said C. D.) at the Queen's Head in the Ship Yard, (meaning Ship Yard, in the county last aforesaid) between four and five (meaning, &c.) in the afternoon of the same day, and that he the said E. F. staid there an hour, and that the said C. D. was then sick, and did not buy his cloaths, whereas in truth and in fact the said E. F. did not go to the said C. D. on the fourth day of June, in the year last above-mentioned, at any time in

the same day, at the Queen's Head in S. Yard, aforesaid, or at any other place whatsoever, on any account whatsoever, and whereas in truth and in fact, at the time when the said A. B. did so solicit, incite, and endeavour to persuade the said E. F. to give such evidence upon his oath as aforesaid, he the said A. B. well knew that he the said E. F. would not give his evidence according to the truth, and that the same evidence so to be given, was false, feigned, and altogether fictitious, to the evil example, &c. and against the peace, &c.

INDICTMENTS FOR ATTEMPTS TO SUBORN TO COMMIT PERJURY.

That before and at the time of the committing of the offence hereinafter next-mentioned, that is to say, on, &c. one E. F. late of, &c. was pregnant of a certain child before then begotten on the body of her the said E. F. by A. B. late of, &c. and that the said child then was likely to be born a bastard, and to be chargeable to the said parish of, &c. to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said A. B. being a person of an evil and wicked mind and disposition and not having, &c. but being moved and seduced, &c. and wickedly and maliciously contriving, devising, and intending not only to exonerate himself from being the reputed father of the said child, and from the trouble, charges, and expences of his monies that might arise and ensue therefrom, but to deprive C. D. late of, &c. of his good name, fame, credit, and reputation, and to put him to great trouble and expence of his monies, and also to cause the said C. D. to be falsely charged with getting the said E. F. with child, and with being the father of the said child with which the said E. F. was then and there so pregnant as aforesaid, did, on the said, &c. at, &c. aforesaid, unlawfully and maliciously solicit, incite, and endeavour to persuade the said A. B. to go, and

For endeavouring to persuade a woman to commit perjury in swearing a child to an innocent person (a).

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(a) The attempt to persuade a witness to swear falsely is a misdemeanor at common law, though ineffectual, Hawk. b. 2. c. 69. s. 10. 2 East, 17. 6 East, 474. See the three following

precedents, and Trem. P. C. 82. And see indictment for dissuading a witness from giving evidence, ante, 235, and indictments for subornation, ante, 475, 477.

did then and there promise to give her the said A. B. the sum of five pounds of lawful money, &c. if she would go before some justice of our said lord the king assigned to keep the peace of our said lord the king, in and for the said county of Essex, and before such justice, falsely, wickedly, and corruptly say and depose, and swear and make oath, that the said C. D. was the father of the said child with which the said E. F. was so pregnant as aforesaid; whereas in truth and in fact, the said A. B. at the time of his so soliciting, inciting, and endeavouring to incite the said E. F. corruptly and falsely to swear as aforesaid, well knew that the said C. D. was not the father of the said child with which the said M. M. was so then pregnant as aforesaid. And so the jurors, &c. do say, that the said A. B. on the said, &c. at, &c. aforesaid, did unlawfully, wickedly, and maliciously solicit, incite, and endeavour to persuade the said E. F. corruptly and falsely to commit wilful and corrupt perjury as aforesaid, to the great damage of the said C. D., to the great displeasure, &c. in contempt, &c. to the evil example, &c. and against the peace, &c.

The like in another form (a).

That A. B. late of, &c. being a wicked and evil-disposed person, and minding and intending great injury to one C. D. of, &c. a good and valuable subject of our said lord the king, and unjustly to cause and procure him to be put to great charges and expence of his monies, and to give security for the maintenance of a child, of which one E. F. spinster, was on, &c. pregnant, and which, by the laws of this realm, was likely to become a bastard, did, on the same, &c. aforesaid, at, &c. aforesaid, unlawfully and wickedly solicit, instigate, persuade, and procure the said E. F. to go before one of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] and that she the said E. F. in consequence of such solicitation, instigation, persuasion, and procurement, did go in her own proper person before G. H. one of the justices of our said lord the king, assigned, &c. [*state the filiation, as ante*, 438, 9.] whereas, in truth and in fact, he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, then and there well knew that the said C. D. would be put to great charges and expence of his monies, if she the said E. F. would swear

(a) See Cro. C. A. 329, and last precedent and notes.

as aforesaid; and whereas, in truth and in fact, he the said A. B. at the said time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever to suspect or imagine that the said C. D. was the father of such child, but on the contrary thereof, the said A. B. was then and there informed by the said E. F. that he the said A. B. was the father of such child, of which she the said E. F. was so pregnant as aforesaid; and whereas in truth and in fact, she the said E. F. never told or informed him the said A. B. that the said C. D. was the father of such child; and whereas, in truth and in fact, he the said A. B. so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said E. F. to swear as aforesaid, in order that he the said A. B. might be exonerated, freed, and discharged from divers expences which might accrue to him as being the father of such child, after the same should be born of the body of her the said E. F. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

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Shropshire. The jurors for our lord the king upon their oath present, that at the assizes, &c. [*here state the caption of the assizes holden at Shrewsbury, as ante, 366 or 368, and that there was an issue between A. B. and C. D.*] And the jurors aforesaid, now here sworn, on their oath aforesaid, do further present, that before the trial of the said issue, and during the time the same was depending, to wit, on, &c. A. B. late of, &c. not having, &c. but being moved and seduced, &c. and wickedly contriving and intending, as much as in him lay, to prevent justice and pervert the due course of law, and minding and intending unjustly to aggrieve the said C. D. the defendant above-named, and wickedly to cause and procure the said C. D. to be convicted of the premises alleged against him in the said issue, and thereby to subject him to the payment of great sums of money for damages and costs, to be recovered against him in the suit then in question between him and the said A. B. as aforesaid, then and there, to wit, on the same day and year last aforesaid, at, &c. aforesaid, did unlawfully and wickedly solicit, instigate, and as much as in her lay, endeavour to persuade one E. F. spinster, to be and appear as a

For endeavouring to suborn a person to give evidence on a trial at the assizes (a).

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witness, on the part and behalf of the said A. B. the plaintiff aforesaid, at the trial of the said issue so as aforesaid joined, and upon the same trial, falsely to swear and give in evidence to and before the jurors of the said jury so sworn and taken between the said parties to try the said issue as aforesaid, of and concerning the premises alleged by the said A. B. against him the said C. D. in the said issue, in substance and effect following, that is to say, that the face of the said A. B. was blue after the blow, (meaning a supposed blow alleged in the declaration of the said A. B.) contained in the said issue to have been given and struck by the said C. D. the defendant aforesaid, in and upon him the said A. B.; whereas in truth and in fact, the face of the said A. B. was not blue nor any ways changed in colour by reason of any blow he had received from the said C. D., nor did he the said C. D. ever assault the said A. B., or give him the said A. B. any blow so as to cause the face of the said A. B. thereby to become blue or any ways changed in colour; but in truth and in fact, the said A. B. at the time she so solicited, instigated, and endeavoured to persuade the said E. F. to swear and give in evidence as is aforesaid, had caused the face of him the said A. B. to be stained with ink, to wit, at, &c. aforesaid, and he the said A. B. did thereupon then and there tell the said E. F. that he the said E. F. might safely swear the face of the said A. B. was blue after the blow, in contempt, &c. in manifest subversion of justice, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

For endeavouring to suborn a bailiff to swear a rescue in a matter depending in the Palace Court (a).

That J. D. late of, &c. being a wicked and evil-disposed person, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving and falsely, wickedly, and maliciously intending by unlawful ways and means, one C. D. of his monies, to deceive and defraud, and to subject him the said C. D. to the payment of 1000*l.* on, &c. at, &c. falsely, wickedly, and maliciously did solicit, instigate, and as much as in him lay, endeavour to persuade, procure, and cause one E. F. of, &c. for divers rewards and promises, falsely, unlawfully, and wickedly to swear, and contrary to truth and justice return a rescue upon a process in and respecting a certain action in the court of his ma-

jesty's palace of Westminster, holden at the parish of Saint George Southwark, in the county of Surrey, for the recovery of 1000*l.* wherein he the said A. B. was plaintiff, and G. H. esq. was defendant, and the said A. B. did then and there, to wit, on the same, &c. aforesaid, at, &c. aforesaid, falsely, unlawfully, and wickedly promise the said E. F. that he the said A. B. would pay the sum of 20*l.* to the said E. F. and would likewise give a bond of indemnity to him the said E. F. if he the said E. F. would swear that he had arrested the said G. H. at the suit of the said A. B. for 1000*l.* (meaning the above-mentioned 1000*l.*), and would also swear, that he the said C. D. had forcibly upon and after such arrest, and against the will of the said E. F. rescued the said G. H. out of the custody of him the said E. F., and the said A. B. did then and there, for the purpose in that behalf aforesaid, wickedly and unlawfully tender and offer to pay to him the said E. F. the said sum of 20*l.* and upwards, he the said E. F. being at that time a person duly authorized to arrest persons upon and procure a legal return to be made to and upon any process issuing out of and returnable in the said Palace Court; whereas in truth and in fact, he the said A. B. at the time when he so solicited, instigated, and endeavoured to persuade, procure, and cause the said E. F. to swear the said rescue against the said C. D. in manner as aforesaid, then and there well knew that he the said E. F. could not truly swear that the said G. H. had been arrested by the said E. F. at the suit of him the said A. B. for 1000*l.* as aforesaid; and whereas in truth and in fact, he the said A. B. then and there likewise well knew that the said E. F. could not truly swear that he the said G. H. had been rescued by the said C. D. out of the custody of the said E. F. at the suit of the said A. B. as aforesaid, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

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That A. B. late of, &c. well knowing that one C. D. deceased, had served our said lord the king as a seaman, on board his majesty's ship C. being in his majesty's service, and that certain wages and pay were due to him for such service, on, &c. at, &c. came before the worshipful J. H. then surrogate

Indictment for feloniously taking a false oath in order to obtain administration of a seaman, under statute 31 Geo. 2. c. 10. s. 24(a).

to the right worshipful P. C. doctor of laws, and unlawfully, wilfully, knowingly and feloniously did take a false oath before the said J. H. (the said J. H. then and there having competent power and authority to administer the said oath to the said A. B. in that behalf) that the said C. D. was then dead, and that he the said A. B. was his brother and next of kin; whereas in truth and in fact, the said A. B. was not the brother of the said C. D., with intent to obtain letters of administration, in order to receive the wages and pay due and owing to the said C. D. on account of his said service, against the form of the statute, &c. and against the peace, &c. [*Second count stating that he supposing wages due, &c.*]

CHAPTER X.

INDICTMENTS, &c. FOR OFFENCES AGAINST PUBLIC PEACE—AS RIOTS, &c. (a).

STAFFORDSHIRE. The jurors for our lord the king, upon their oath, present, that A. B. late of —, and divers

For felony in continuing a riotous assembly for an hour after proclamation read by a justice of the peace on riot act, 1 Geo. 1. st. 2. c. 5. s. 1 (b).

(a) Assaults, false imprisonments, forcible entries, &c. might be arranged in this chapter, but as they more particularly affect a private individual, they are inserted in the chapters of indictments for injuries to persons and real property, and in this chapter only riots, and other offences, which are more immediately injurious to the *public* peace, are inserted.

(b) See other precedents, Cro. C. A. 269. Cro. C. C. 8th ed. 428. 7th ed. 678. 2 Stark. 642. *Offence.* This indictment is framed on the 1 Geo. 1. st. 2. c. 5, called "The Riot Act." That statute enacts, that if any persons to the number of twelve, or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff, or bailiffs, or other head officer, or justice of the peace of any city, or town corporate, where such assembly shall be by pro-

clamation to be made in the king's name, in the form directed by the act to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously remain and continue together, by the space of one hour after such command or request made by the proclamation, they shall be adjudged guilty of felony, without benefit of clergy, s. 1. The form of the proclamation is given by the same statute, s. 2. Demolishing, or beginning to demolish, any church or place of worship, authorized by the act of Toleration, or any dwelling-house, barn, stable, or other out-house, in a riotous and tumultuous manner, is also made a capital felony, s. 4. If the officers proceeding to make proclamation, be obstructed, those who obstruct will be felons, without benefit of clergy, and those who remain after the attempt, will be liable to the same penalty as they would

other evil-disposed persons, to the number of twelve, or more, (to the jurors aforesaid, as yet unknown) after the last

have incurred, had the endeavours to read the proclamation been successful, s. 5. This act is to be read openly at every quarter sessions, and on every leet and law day, s. 7. Persons present, aiding and abetting others unknown, to demolish a dwelling-house, who are *principals in the second degree*, are felons within this provision, 4 Burr. 2076. The provision relating to the destruction of churches, dwelling-houses, and out-houses, was, by 9 Geo. 3. c. 29. s. 1, extended to mills, and the works thereto belonging, and by 52 Geo. 3. c. 130. s. 2, was extended to the demolition of erections, buildings, and engines for conducting any kind of trade or manufactory, or for depositing goods or merchandize, and by 56 Geo. 3. c. 126, persons riotously assembled, and pulling down any engine, &c. belonging to the collieries, &c. are declared to be guilty of felony, without benefit of clergy. Besides these acts, there are the 39 Geo. 3. c. 79, for preventing seditious meetings, &c. and the 60 Geo. 3. c. 1, to prevent the training to arms, &c. and see these acts, post.

To constitute a felony under the 4th section of 1 Geo. 1. s. 2. c. 5, it is not necessary that twelve persons should have been guilty, see Dougl. 1st ed. 673. 2d edit. 699. 5 T. R. 14. Cro. C. C. 8th edit. 430. 2 Saund. 377, b. n. 12. *Process*. After the proclamation has been read to any assembly of rioters, and an hour has elapsed without their dispersing,

every mayor, justice of the peace, sheriff, under-sheriff, bailiff, or other head officer, and for every high and petty constable, and other peace officer, who are authorized to require the assistance of all his majesty's subjects, are permitted and enjoined to seize and apprehend any of the offenders, and if, in the resistance, any of the latter be killed, the parties attempting to arrest them will be justified, 1 Geo. 1. st. 2. c. 5. s. 3. A private person may arm himself, and assist in the suppression of a riot, without the aid or presence of a peace officer, 1 Hawk. c. 65. s. 11. 2 B. & P. 264. Burn, J. 25th edit. 20, vol. 5. *Verdict*. If aiders and abettors be indicted under this statute, under the general terms of the act, "for that they did assemble," &c. and feloniously did begin to demolish a house, &c. and the jury find that they were *present* and did *encourage*, and abet persons engaged in the act of violence, "by shouting and using expressions to incite the persons so to do, but that they did not, with force, begin to demolish and pull down, or do any act with their own hands, or persons for that purpose, otherwise than as aforesaid" the finding will amount to a verdict of guilty, and sentence of death will be passed against the defendants, 4 Burr. 2073 to 2086. For the nature of riots in general, and the mode of constructing indictments against those who commit them, see the notes to the precedent, post, 488, 9.

day of July, in the year of our Lord 1715, &c. (a) to wit, on, &c. with force and arms, at, &c. unlawfully, riotously, and tumultuously (b), did assemble and meet together, to the disturbance of the public peace, and that afterwards, to wit, on the said, &c. at, &c. aforesaid, C. D. esquire, then being one of the justices of our said lord the king [*assigned, &c. as ante*, 182,] did then and there come as near as he safely could to the said A. B. and the said divers other persons, to the number of twelve or more, to the jurors aforesaid as yet unknown, being then and there so assembled, to the disturbance of the public peace as aforesaid, and with a loud voice he the said C. D. did then and there command, and cause to be commanded, silence to be while proclamation was making; and the said C. D. after that did then and there openly, and with a loud voice, make proclamation (according to the form of the statute in such case made and provided), in these words following, that is to say, "our sovereign lord the king chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the 1st year of King George, for preventing tumults and riotous assemblies. God save the king." And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. and the said divers other persons to the number of twelve and more (to the jurors aforesaid as yet unknown) afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid (notwithstanding the said proclamation was so openly made as aforesaid) did then and there unlawfully, feloniously, riotously, and tumultuously, to the disturbance of the public peace, remain and continue together by the space of one hour after such command made by the proclamation so as aforesaid, against the form of the statute in such case made and provided, in contempt of our said lord the king and his laws, to the evil example of all others, to the great disturbance and terror of the quiet and peaceable subjects of our said lord the now king, and against the peace of our said lord the king, his crown and dignity.

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(a) This allegation is not necessary, *ante*, vol. i. 285, and see Cro. C. C. 8th edit. 428. is introduced in some precedents, see Cro. C. A. 209, but see Cro. C. C. 8th edit. 428. 2 Stark. 393. 642.

(b) The word "feloniously,"

For felony in riotously beginning to demolish a house, on 1 G. 1. st. 2. c. 5. s. 4 (a).

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That A. B. late of, &c. and divers other evil-disposed persons to the number of twenty and more, whose names to the jurors aforesaid are at present unknown, on, &c. with force and arms at, &c. unlawfully, riotously and tumultuously did assemble together, to the disturbance of the public peace of our said lord the king; and being so unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, then and there unlawfully, and with force, feloniously did begin to demolish and pull down the dwelling-house of C. D. situate in, &c. aforesaid, against the form, &c. and against the peace, &c.

Common form of indictment for a riot (b).

That A. B. &c. late of, &c. C. D. late of, &c. and E. F. late of, &c. together with divers other evil-disposed persons, to the

(a) See other precedents, Cro. C. C. 429. Cro. C. A. 409. 2 Stark. 429. This indictment is framed on the 1 Geo. 1. st. 2. c. 5. s. 4. See note (b) to the preceding precedent.

(b) See other precedents, 3 Harg. St. Tr. 630. Cro. C. C. 413 to 436. Cro. C. A. 244 to 271, 509. Burn, Just. Riot. Williams, J. Riot, &c. Stark. 640 to 651. 4 Wentw. 309, 311. For a conspiracy to commit riot, &c. ante, 208, &c.; see Cro. C. C. 8th ed. 422, and post, tit. "Conspiracies." *The offence.* See, in general, Hawk. b. 2. c. 65, per totum. Com. Dig. Forcible Entry, D. 8. Burn, Just. Riot. Williams, J. Riot, &c. Cro. C. C. 429, 430. Dick. Just. 314 to 320. Toone, 372. A riot is a tumultuous disturbance of the peace, by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any one who shall oppose them, and afterwards putting the design into execution in a terrific and violent manner, whether the ob-

ject in question be lawful or otherwise. Hawk. b. 2. c. 65. s. 1. Therefore, to constitute a breach of the peace a riot, it is necessary that three persons at least should unite; and if a number of persons be indicted for the same offence, and all be acquitted but two, unless the indictment charge them to have been associated with others unknown, no judgment can be given against the parties convicted. 2 Salk. 593. But if six are indicted, four of whom only live to be tried, of whom two are acquitted, and two found guilty, the parties convicted will receive sentence, because the jury must be intended to have found them guilty of a riot, in conjunction with those who are dead. 3 Burr. 1264. To constitute a riot, the parties must also act without any authority to give colour to their proceedings; for a sheriff, constable, or even a private individual, are not only permitted, but enjoined, to raise a number of people to suppress rebels, enemies, or rioters. It is legal for a justice of the peace

to raise a posse in making an entry into lands, when he has just reason to fear a violent resistance, and for any ministerial officer, resisted in the execution of lawful process, to call on the people to assist him. Hawk. b. 2. c. 65. s. 2. Ante, vol. i. 16 to 20. Women are punishable as rioters; but infants under the age of discretion, are not persons within the description of rioters punishable as rioters. Hawk. b. 1. c. 65. s. 44. If any person encourages or promotes, or takes part in riots, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter, for in this case all are principals. 2 Campb. 370. The intention also with which the parties assemble, or, at least, act, must be unlawful. For if a sudden disturbance arise among persons met together for an innocent purpose, they will be guilty of a mere affray; though if they form parties, and engage in any violent proceedings, with promises of mutual assistance; or if they are impelled with a sudden disposition to demolish a house or other building, there can be doubt they are rioters, and will not be excused by the propriety of their original design. Hawk. b. 2. c. 65. s. 3. But though there must be an evil intention, whether premeditated or otherwise, the object of the riot itself may be perfectly lawful, as to obtain entry into lands, to which one of the parties has a rightful claim; for the law will not suffer private individuals to disturb the peace, by obtaining that redress by force, which the law would regularly award him. Hawk. b. 2. c. 65. s. 7.

8 T. R. 357, 364. It is also laid down by Hawkins, that the grievance to be redressed must be of a private nature; but this position, if it be correct, can only mean, that where the disturbance arises from some public cause, the offence assumes the deeper guilt of sedition or treason. There must be either an actual violence, or an offer to commit it to the person or property of some individual; and the mere riding in a tumultuous way about the country, will only constitute an unlawful assembly, 3 Inst. 176. The distinction between a riot, rout, and unlawful assembly, seems to be, that the first is a tumultuous meeting of persons, who are guilty of actual violence, the second where they endeavour to commit an act which would make them rioters; and the last where they meet with an intention to make a riot, but neither carry their purpose into effect, nor make any endeavour towards it, 3 Inst. 176. Hawk. b. 2. c. 65. s. 1, 8, 9.

Process. At common law, all sheriffs, under-sheriffs, and peace officers, are both permitted and required to do all in their power towards suppressing a riot, and to call upon others for an assistance, which it is their duty to render. Private individuals may also, of their own accord, arrest the progress of any who are coming to assist in the tumult. It has also been holden, that they may arm themselves to suppress a riot, where the public safety requires the most vigorous exertions, though such conduct is too violent to be adopted, except where the disturbance is aimed at the exercise of the higher authorities, or borders on acts of

number of ten and more (a), (to the jurors aforesaid as yet

sedition, Poph. 121. Kel. 76. Justices of the peace are also, by several statutes, empowered to punish rioters by means of a summary proceeding, *Salk.* 34 Edw. 3. c. 1. 17 Rich. 2. c. 8. 13 Hen. 4. c. 7. 19 Hen. 7. c. 13. 13 Car. 2. c. 5. For an analysis of these statutes, and a very full exposition of the constructions put upon them, see Williams, J. Riots, III.

The indictment must state the unlawful act which the defendants assembled to commit, in order that the court may judge whether the design was illegal, 2 Ld. Raym. 1210. But it need not contain the words *vi et armis*, as the term *riotously* sufficiently implies violence, without their insertion, 2 Sess. Cas. 13. 2 Stra. 834. Nor is it necessary that the term *unlawfully* should be inserted, on the ground that the offence is manifestly illegal, Cro. C. C. 43. It may charge the defendants to have been guilty together with other persons unknown; which seems to be the most prudent course, as if all are acquitted but one or two, and the jury find them guilty, the latter may receive judgment, since they will be presumed to be united with those who are yet undiscovered, whereas otherwise it is impossible any sentence could be passed against individuals for an offence which they could not have committed alone, 1 Bla. Rep. 350. 2 Salk. 593. 3 Salk. 317, *supra*. When several are jointly indicted for a riot in order to save expence, on the motion of the defendants, a rule may, it is said, be made, compelling the prosecutor to name three or four against whom he will pro-

ceed, the others entering into an engagement to plead guilty if the other defendants are convicted, and not guilty if they are acquitted, 3 Salk. 317. If the terms riotously and routously are to be found throughout the indictment, the defendants cannot be convicted of an affray, or receive judgment for an inferior offence, when two only are found guilty, 2 Salk. 593, 4. It is advisable to add a count for a common assault where an individual has been attacked, for the grand jury may return a true bill as to the latter count, and indorse *ignoramus* as to the count for the riot. Cowp. 325. Ante, vol. i. 323. *Proof.* However numerous the defendants may be who are joined in the same indictment, the prosecutor will succeed, though he prove the charge against three of them only, and the joinder of the innocent will not at all affect the conviction of the guilty. 4 Harg. St. Tr. 723.

Punishment. The usual punishment for riots at common law, is by fine and imprisonment, proportioned to the offence, to which, in some cases of peculiar enormity, the pillory has been added, Hawk. b. 2. c. 65. s. 11. Thus where a great disturbance was made by an immense assemblage of people collected together, one of the parties convicted who had engaged in the tumult with a sword in his hand, and a kettle on his head, was sentenced to be set in the pillory, with the same accoutrements, Cro. Car. 507. By the 3 G. 4. c. 114, hard labour may be imposed.

(a) This allegation of the

unknown)(*a*), on, &c. with force and arms, at, &c. aforesaid, did unlawfully, riotously, routously, and tumultuously assemble and gather together to disturb the peace of our said lord the king; and being so then and there assembled and gathered together,* did then and there make great noises, riot, tumult, and disturbance, and then and there unlawfully, riotously, routously, and tumultuously remained and continued together, making such noises, riot, tumult, and disturbance, for a long space of time, to wit, for the space of six hours and more, then next following, to the great terror and disturbance not only of the liege subjects of our said lord the king, there and thereabouts inhabiting, residing, and being; but of all the other liege subjects of our said lord the king, there passing and repassing in and along the public streets and king's common highways there, in contempt of our said lord the king and his laws, and against the peace of our said lord the king, his crown and dignity.

[*Commencement of information, as ante, 6.*] *Sussex.* That A. B. late of, &c. and C. D. late of, &c. together with divers other evil-disposed persons, to the number of three and more, to the said attorney-general as yet unknown, heretofore, to wit, on, &c. with force and arms, at, &c. aforesaid, did unlawfully, riotously, and routously assemble and gather together, to disturb the peace of our said lord the king, and so being then and there assembled and gathered together, did then and there, with force and arms, unlawfully, riotously, and routously, break and enter a certain room in which E. F. esquire, and G. H. esquire, two of the commissioners acting in and for the town and port of H. and liberty thereof, in the said county, in execution of the statutes made for granting to his majesty rates and duties in Great Britain, on profits arising

For a riot and disturbance of commissioners acting under the property tax acts (*b*).

First count, for breaking and entering a room where commissioners and surveyor of the property tax were in execution of their duty, and riotously, &c. obstructing them, and assaulting surveyor.

number is not material, and more or less may be proved. However, in an indictment against Horn and others, on which Horn was convicted, see post, 492, the second count described the other persons not named, under a videlicet, thus, "together with divers, to wit, fifty other persons, to the jurors aforesaid as yet un-

known, being rioters, routers, and disturbers of the peace, heretofore, to wit, on, &c. at, &c."

(*a*) As to the use of these words, see *supra*, 489.

(*b*) This was the information against Breeds and others, 53 Geo. 3. see precedent and notes, ante, 488.

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Second count,
omitting the as-
sault for obstruc-
tion by outrageous
speeches, &c.

from property, professions, trades, and offices, and J. K. a surveyor of the said duties for the same division, were then and there assembled, and in the execution of their duty as such commissioners and surveyor, and did make a great noise and disturbance therein, and unlawfully, riotously, and routously, did then and there obstruct, disturb, and hinder the said E. F. and G. H. so being such commissioners, and the said J. K. so being such surveyor in the execution of their respective duties, and did then and there, with force and arms, menace and assault the said J. K. so being such surveyor, in the execution of his duty as such surveyor, did other wrongs to the said E. F. and G. H. so being such commissioners, and the said J. K. so being such surveyor, then and there unlawfully, riotously, and routously, did, to the great damage of the said E. F., G. H., and J. K., to the great hindrance and obstruction of the collection of the revenue of our said lord the king, in contempt of our said lord the king and his laws, to the evil example of, &c. and against the peace, &c. And the attorney-general, &c. that the said A. B. and C. D. being evil-disposed persons as aforesaid, and unlawfully devising and intending to obstruct and hinder the said E. F. and G. H. being such commissioners as aforesaid, and the said J. K. being such surveyor as aforesaid, in the execution of their respective duties aforesaid, afterwards, to wit, on the same, &c. aforesaid, with force and arms at H. aforesaid, in the county aforesaid, unlawfully and injuriously did break and enter a certain room at H. aforesaid, in which the said E. F. and G. H. being such commissioners as aforesaid, and the said J. K. so being such surveyor as aforesaid, were assembled in and for the execution of their respective duties aforesaid, and did then and there make a great noise and disturbance therein, and then and there, with force and arms, did unlawfully, wrongfully, injuriously, and contemptuously, in a violent and noisy manner, and by violent, noisy, and outrageous speeches, threats and gestures, obstruct and hinder the said E. F. and G. H. so being such commissioners as aforesaid, and the said J. K. so being such surveyor as aforesaid, in the execution of their respective duties aforesaid, and other wrongs to the said E. F. and G. H. and J. K. so being such commissioners and surveyor as aforesaid, then and there did, to the great damage, &c. [*as in the first count.*] And the said attorney-general of our said lord the king, for our said lord the king further gives the court here to understand and be informed, that the said A. B. and C. D. afterwards, to wit, on

Third count, for
a common assault
on the collector
when in execu-
tion of his office.

the same day and year aforesaid, at H. aforesaid, in the county aforesaid, with force and arms, made an assault on the said J. K. so being such surveyor as aforesaid, in the execution of his duty as such surveyor, and then and there menaced and ill-treated the said J. K. as such surveyor, in the execution of his said duty, and other wrongs to the said J. K. then and there did, to the great damage of the said J. K. in contempt, &c. (as before) Whereupon, &c. [*conclude as ante*, 6.]

Devonshire. That A. B. late of, &c. and C. D. late of, &c. [492] together with divers, to wit, fifty other persons to the jurors aforesaid unknown, being rioters, routers, and disturbers of the peace, on, &c. at, &c. unlawfully, riotously and tumultuously did assemble and gather together to disturb the peace of our said lord the king, and with an intent unlawfully to obstruct and hinder the execution of a certain act of parliament made in the 25th year of the reign of our lord the now king, intituled, "An Act," &c. [*set out the title of the act.*] and being so assembled and gathered together the said A. B. and C. D. and the said persons to the jurors aforesaid unknown, then and there unlawfully, riotously and tumultuously remained and continued together making great noises and committing great violences and disturbances for the space of four hours, to the great terror of his majesty's subjects, to the evil example, &c. and against the peace, &c. [*Second count for a common riot, as ante*, 488, and see the notes.]

For riotously assembling to prevent the execution of an act relating to the revenue (a).

That A. B. late of, &c. [*state the names and additions of the rioters who are known.*] and divers evil-disposed persons to the number of forty or more to the jurors aforesaid as yet unknown, being rioters, routers, and disturbers of the peace of our lord the now king, and not regarding the laws and statutes of this kingdom, on, &c. with force and arms, at, &c. aforesaid, unlawfully, riotously, routously, and tumultuously did assemble and meet together to disturb the peace of our said lord the king, and to hinder and retard the due execution of a certain act of parliament made and passed in, &c. intituled,

For tumultuously assembling to prevent the execution of turnpike road act (b).

(a) This indictment against Samuel Horn and others, was of Easter Term, 26 Geo. 3. and Horn was convicted. From Mr. J. Ashhurst's paper

books, 22 vol. 201. See precedent and notes, ante, 488.

(b) See Cro. C. A. 6. See precedent and notes, ante, 488.

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[*set out the title of the act,*] and to hinder, oppose, and stop certain workmen then employed in and about the working and making a certain turnpike road, in pursuance of the said act of parliament, in and through a certain place in the parish aforesaid, called the Marshes, and being so assembled, and met together as aforesaid, they the said A. B. &c. together with the said other evil-disposed persons to the jurors aforesaid as yet unknown, then and there unlawfully, riotously, routously, and tumultuously did hinder, oppose, and stop the said workmen so employed as aforesaid, from proceeding in and performing the said work, and then and there unlawfully, riotously, routously, and maliciously did make an assault and affray upon one C. D. (then and there being a surveyor of the said turnpike road within the district of N. in the said act mentioned, duly appointed by nine at least of the trustees acting within the said district, in pursuance of the said act of parliament, at a meeting of the said trustees then lately before held within the said district, under their hands and seals, for the viewing the condition of the said roads within the said district to be made, repaired, and amended in pursuance of the said act, and to see that the same were repaired, and for other services in the said act mentioned and expressed, in the peace of God and our said lord the king, and in due execution and performance of his said office then and there being, and him the said C. D. then and there unlawfully, riotously, routously, and maliciously did beat, bruise, wound, and ill-treat, so that his life was greatly despaired of, and other wrongs to the said C. D. then and there unlawfully, riotously, and routously did, to the great damage, danger, and fear of the said C. D. to the great hindrance and obstruction of the said workmen in the execution and performance of the said work, in contempt, &c. to the evil example of, &c. and against the peace, &c. [*Second count, leaving out the part relating to the riot and workmen. Add a count for a common assault, as on a private individual.*]

Endeavouring to
rescue persons
apprehended for
attempting to cut
down a turnpike
gate (a).

That A. B. late of, &c. C. D. late of, &c. together with divers other evil-disposed persons to the number of twenty or more to the jurors aforesaid as yet unknown, on, &c. with force and arms, at, &c. aforesaid, did unlawfully, riotously,

(a) See Cro. C. C. 8th edit. 586. See precedent and notes, 414. 7th edit. 675. 2 Stark. ante, 488.

and routously assemble and gather together to disturb the peace of our said lord the king, and being then and there so assembled and gathered together, were armed with axes, hatchets, and other instruments, with an intent to cut down and destroy a certain turnpike gate, then and there lately before, to wit, on, &c. erected by authority of a certain act of parliament in that case made and provided, intituled, &c. and that the said A. B. and C. D. afterwards, to wit, on the same day and year first above-mentioned, at, &c. aforesaid, were lawfully taken and apprehended for the offences aforesaid, and then and there were conveyed before J. S. esq. then one of the justices of our said lord the king, assigned, &c. [*as ante*, 182,] to be examined touching the premises, and further to be dealt with according to law, and were then and there duly kept and detained in custody at the dwelling-house of the said J. S. situate in, &c. aforesaid, for that purpose, and that the said A. B. and C. D. so being in custody for the offences aforesaid, one E. F. late of, &c. afterwards, to wit, on the same day and year first above-mentioned, at, &c. aforesaid, together with the said other persons to the jurors aforesaid as yet unknown, the dwelling-house of the said J. S. there situate, unlawfully, riotously, and routously did attack and beset, and that he the said E. F. did, then and there advise, persuade and encourage the said other persons to the jurors aforesaid as yet unknown, to discharge and shoot off several guns against the dwelling-house of the said J. S. and by such advice and persuasion and encouragement of the said E. F. the said other persons to the jurors aforesaid as yet unknown, then and there, did discharge and shoot off several guns against the dwelling-house of the said J. S. with an intent forcibly to rescue the said A. B. and C. D. so as aforesaid, being in custody for the causes before mentioned, in contempt, &c. to the great damage of the said J. S. to the evil example, &c. and against the peace, &c.

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Surrey. That A. B. late of, &c. (and other defendants) together with divers other evil-disposed persons to the jurors aforesaid as yet unknown, being rioters, routers and disturbers of the peace of our said lord the king, on, &c. with force and

For riotously kicking about a foot ball in the town of Kingston upon Thames (a).

(a) This indictment was drawn A. D. 1797, by a very eminent pleader, for the purpose of suppressing an ancient

custom of kicking about foot-balls on a Shrove Tuesday, at Kingston upon Thames. See precedent and notes *ante*, 488.

Second count,
for a common
nuisance in kick-
ing about a foot
ball.

arms, at the town, &c. &c. unlawfully, riotously, and routously did assemble and meet together to disturb the peace of our said lord the king, and being so assembled and met together, did then and there unlawfully, riotously kick, cast, and throw a certain foot-ball in and about the said town, and then and there wilfully, riotously, and routously made a great noise, riot, disturbance, and affray therein, in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said defendants, together with divers other evil-disposed persons to the jurors aforesaid as yet unknown, on the said, &c. with force and arms, at, &c. did, unlawfully assemble and meet together, and being so assembled and met together, did then and there wilfully kick, cast and throw a certain foot-ball in and about the said town, near the dwelling-houses of divers liege subjects of our said lord the king, and also in divers streets and common highways there, to the great damage and common nuisance of all the liege subjects of our said lord the king, residing in the said dwelling-houses, and passing and repassing in and along the said streets and highways, to the evil example, &c. and against the peace, &c.

Information by
the master of the
crown office for a
riot in Covent
Garden Theatre,
and preventing
the acting of a
play (a).

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First count, for
a riot, &c. and
compelling the
manager to come
upon the stage
and discharge
C. M. the actor.

[Commencement of information, as ante, 7.] That on, &c. and long before that time, G. C. esq. and certain other persons, were the proprietors of a certain theatre or play-house situate in the parish of St. Paul, C. G., within the liberty of W. commonly called the theatre royal, in C. G., otherwise Covent Garden Theatre, and then and there had lawful power, licence, and authority from time to time to show, exhibit, and present tragedies, comedies, and plays, within the said theatre, and to gather together, entertain, privilege, and keep such and so

(a) See Cro. C. C. 8th edit. 416. Cro. C. A. 224. This was the information for Mich. T. 15 G. 3. for raising a disturbance at the theatre for the purpose of procuring the discharge of Mr. Macklin. The defendants were convicted and fined. It was recently laid down, that although the audience at a theatre have a right to express their disapprobation of any performance or actor, exciting

their displeasure at the moment, yet if a number of persons go thither with an intention to make a disturbance and render the performance inaudible, though they offer no actual violence to the house, or any person there, they will be guilty of a riot. 2 Campb. 358. Semble, that this form is longer, and more incumbered with allegations and proof, than necessary.

many players and persons to act tragedies, comedies, and plays, within the said theatre, as they should think convenient and necessary, and such persons to permit and continue at and during the pleasure of the said proprietors from time to time to act tragedies, comedies, and plays, within the same, peaceably and quietly, without impeachment or impediment of any person or persons whatsoever, to wit, at W. aforesaid, in the said county of M. And the said coroner and attorney, &c. That on the said, &c. C. M. gentleman, was a person who used and followed the profession of a player, and then was, and long before that time had been privileged, kept, and retained as a player, in the way of his said profession, by the said G. C. on behalf of himself and the other proprietors of the said theatre, for and during a certain time not then expired, at and for a salary or reward, therefore payable by them the said proprietors to the said C. M.; and that the said C. M. then, and for divers, to wit, thirty years then last past, sought his living, and sustained himself and his family by his said profession and character of a player, and thereby gained and acquired sundry great gains, and a comfortable subsistence for himself and his family, to wit, at, &c. aforesaid. And the said coroner and attorney, &c. further, &c. that on the said, &c. a certain old play called the Merchant of Venice, was appointed by the said G. C. to be presented that day at and in the said theatre, according to public notice thereof, in that behalf given, and which said play had for a long time, to wit, for ten years or more before that time been presented and performed in the said theatre, and that the said C. M. as such player as aforesaid, was appointed by the said G. C. to play and perform a certain part in the said play, called and distinguished by the name of Shylock, and which said part in the said play the said C. M. had often before played and performed in the said theatre, with great and public applause, to wit, at, &c. aforesaid. And the said coroner and attorney, &c. further, &c. that A. B. late of, &c. [*and several other defendants*] unlawfully, wickedly, and maliciously conspiring together to ruin the said C. M. in his aforesaid profession of a player, and to deprive him of his said means of livelihood, and to extort and procure his discharge from the said theatre, by the proprietors thereof, with force and arms, in the said, &c. at, &c. aforesaid, did unlawfully, riotously, and routously assemble and gather together in the said theatre, to disturb the peace of our said lord the king, and being so assembled and gathered together in the said theatre, then and

there, unlawfully, wickedly, riotously, and routously, made and raised, and caused and procured to be made and raised, a great noise, tumult, riot, and disturbance in the said theatre, and thereby tumultuously and turbulently prevented and hindered the said C. M. from playing and performing the said part or character of Shylock, in the play or comedy called the Merchant of Venice; and then and there wholly obstructed and prevented the performance of the said play or comedy, there in the said theatre; and then and there also forced, compelled, and obliged the said G. C. then being one of the said proprietors of the said theatre or play-house, and then and there being the acting manager thereof, against his will to come upon the stage of the said theatre there, and for himself and the other proprietors of the same theatre, then and there to discharge the said C. M. without his consent, and against his will, from his said retainer or employment of a player or actor at the said theatre, and wholly to dismiss him therefrom, against the will of the said G. C. being such acting manager as aforesaid, to wit, at W. &c. aforesaid, in contempt of our said lord the king and his laws, to the manifest injury and ruin of the said C. M. in his said profession and way of livelihood, to the great loss and damage of the said proprietors of the said theatre or play-house, to the evil and pernicious example, &c. against the peace, &c. And the said coroner and attorney, &c. That on the said, &c. aforesaid, and long before that time, the said G. C. esquire, was the acting manager of a certain other theatre or play-house, situate, &c. commonly called the Theatre Royal, in C. G. for and on the behalf of the then proprietors thereof, to wit, at W. &c. aforesaid. And the said coroner and attorney, &c. further gives the court here to understand and be informed, that on the said, &c. the said C. M. gentleman, was a person who used and followed the profession of a player, and then was, and long before that time had been, employed, kept, and retained as a player in the way of his said profession, by the said G. C. on the behalf of the then proprietors of the said last-mentioned theatre, for and during a certain time not then expired, at and for a salary or reward therefore payable to the said C. M. and that the said C. M. then, and for divers, to wit, thirty years before that time, sought his living, and sustained himself and his family, by his said profession and character of a player, and thereby gained and acquired great gains, and a comfortable subsistence for himself and his family, to wit, at, &c. aforesaid. And the said coroner

Second count,
that C. M. was
retained by the
manager on be-
half of the pro-
prietors, and that
the defendants
made a riot, and
compelled the
manager, &c.

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and attorney, &c. further, &c. that on the said, &c. the aforesaid play called the Merchant of Venice, was appointed by the said G. C. as such manager, on behalf of the said then proprietors of the said last-mentioned theatre, to be presented and performed on that day, at and in the said last-mentioned theatre, according to public notice thereof in that behalf given, he the said G. C. as such manager as aforesaid, having lawful authority for that purpose; and that the said C. M. as such player as aforesaid, was appointed by the said G. C. as such manager of the said last-mentioned theatre as aforesaid, to play and perform a certain part in the said play, called and distinguished by the name of Shylock, he the said G. C. then and there having lawful authority to make such appointment, to wit, at, &c. aforesaid. And the said coroner and attorney, &c. further, &c. that the said [*defendants*], with force and arms, on the said, &c. at, &c. aforesaid, did unlawfully, riotously, and routously assemble and gather together in the said theatre, to disturb the peace of our said lord the king, and being so assembled and gathered together in the said theatre, then and there unlawfully, wickedly, riotously, routously, at and in the said last-mentioned theatre or play-house, made and raised, and caused and procured to be made and raised, a great noise, riot, tumult, and disturbance, and thereby then and there unlawfully, riotously, tumultuously, and turbulently prevented and hindered the said C. M. from playing and performing the said part of Shylock in the said play called the Merchant of Venice; and then and there wholly obstructed and prevented the performance of the said play, there in the said last-mentioned theatre, without the consent, and against the will of the said G. C. and the said then proprietors thereof; and then and there also, unlawfully, riotously, tumultuously, and maliciously forced, compelled, and obliged the said G. C. as such manager as aforesaid, for and on the behalf of the then proprietors of the said last-mentioned theatre, against the will of the said G. C. and the said then proprietors of the said theatre, to discharge the said C. M. without his consent, and against his will, from his said retainer and employment of a player, at the said last-mentioned theatre, and wholly to dismiss him therefrom; by means whereof the said C. M. hath ever since that time hitherto remained wholly discharged and dismissed from his aforesaid retainer and employment, and hath wholly lost and been deprived of great gains, which would otherwise have accrued to him therefrom, to wit, at, &c. aforesaid, in contempt of our said lord the king and his laws, to the

Third count, that the proprietors retained, &c. and that the defendants made a riot, and compelled them to dismiss, &c.

manifest injury and ruin of the said C. M. in his said profession and way of livelihood, to the evil example of all others, and against the peace, &c. And the said coroner and attorney, &c. that on the said, &c. the said play or comedy called the Merchant of Venice, was appointed by the then proprietors of a certain other theatre or play-house, called the theatre royal in C. G. situate in the said parish of St. Paul, C. G. within the said city of W. to be acted and performed on that day, at and in the said last-mentioned theatre, according to public notice in that behalf previously given (the said then proprietors of the said last-mentioned theatre or play-house, then and there having lawful power, licence, and authority for that purpose ;) and that the said C. M. being then and there a player or actor, belonging to the said last-mentioned theatre or play-house, and before that time, and then retained by the said then proprietors thereof, as such player or actor, and was then and there appointed by the said then proprietors thereof, to play and perform a certain part or character in the said last-mentioned play or comedy called Shylock (they the said last-mentioned proprietors of the said last-mentioned theatre or play-house, having then and there lawful power, licence, and authority in that behalf,) to wit, at, &c. aforesaid. And the said coroner and attorney of our said lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, that the said defendants [*state the riot, as in preceding count, except that the defendants forced the proprietors to dismiss C. M.*

Fourth count, for a riot in the play-house, and preventing the performance of the play.

without stating that the manager came upon the stage.] And the said coroner and attorney, &c. further, &c. that the said defendants, on the said, &c. at, &c. aforesaid, with force and arms, unlawfully, riotously, and routously assembled and gathered together at and in a certain other theatre, situate in the said parish of St. Paul, C. G. commonly called the Theatre Royal in C. G. to disturb the peace of our said lord the king, and being so assembled and gathered together, then and there made and raised, and caused and procured to be made and raised, a great noise, riot, tumult, and disturbance there, in order to obstruct, prevent, and hinder, and for the purpose of obstructing, preventing, and hindering the performance of the exhibition of the said play called the Merchant of Venice, in the said last-mentioned theatre, and which said play was appointed by the then proprietors of the said last-mentioned theatre, to be then and there acted and performed at and in the said last-mentioned theatre, on that day, according to public

notice thereof, in that behalf given, (they the said then proprietors of the said last-mentioned theatre, then and there having lawful power, licence, and authority for that purpose), and that the said defendants did, then and there, with force and arms, unlawfully, tumultuously, riotously, and routously obstruct, prevent, and totally hinder the said play from being then and there acted and performed at and in the said last-mentioned theatre, to wit, at, &c. aforesaid, in contempt, &c. to the great loss and injury of the said then proprietors of the said last-mentioned theatre, to the evil and pernicious example, &c. and against the peace, &c. [*Common conclusion of information, as ante, 7.*]

That A. B. late of, &c. C. D. late of, &c. and E. F. late of, &c. together with fifty other evil-disposed persons and more (to the jurors aforesaid as yet unknown), being rioters, routers, and disturbers of the peace of our said lord the king, on, &c. with force and arms, at, &c. aforesaid, unlawfully, riotously, and routously, did assemble and gather together to disturb the peace of our said lord the king, and being so assembled and gathered together, ten lamps and two doors belonging to C. F. esquire, then and there being in a certain building of him the said C. F. called Drury-lane play-house, then and there unlawfully, riotously, and routously did break and destroy (his royal highness the Prince of Wales then and there being in the said play-house), and other wrongs to the said C. F. then and there unlawfully, riotously, and routously did, to the great damage of the said C. F. in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B., C. D., and E. F. together with fifty other evil-disposed persons and more (to the jurors aforesaid as yet unknown), being rioters, routers, and disturbers of the peace of our said lord the king, on the said, &c. with force and arms, to wit, with sticks, staves, and other offensive weapons, at, &c. aforesaid, unlawfully, riotously, and routously did assemble and gather together, to disturb the peace of our said lord the king, and being so assembled and gathered together, armed as last aforesaid, did then and there unlawfully, riotously, and routously make a great noise, riot, and disturbance, and did then and there remain and continue armed as last aforesaid,

For a riot committed by several footmen at Drury Lane theatre, and breaking the lamps thereof, when the Prince of Wales was in the House. First count, for a riot and breaking lamps (a).

Second count, for a general assembly, with arms, and making a riot.

(a) Cro. C. C. 8th edit. 414. 7th edit. 673, and the precedents and notes, ante, 488, 9.

making such noise and disturbance for the space of half an hour and more, then next following, to the great disturbance and terror, not only of the liege subjects of our said lord the king, there being and residing, but of all other liege subjects of our said lord the king then passing and repassing, in and along the king's common highway there, in contempt, &c. [*As in first count.*]

The like for a riot at common law, and an assault on an individual (a).

[*As in the precedent, ante, 488 to 490, to the asterisk, and then proceed as follows,*] in and upon one A. I. in the peace of God, and of our said lord the king then and there being (b), unlawfully, riotously, and routously did make an assault, and him the said A. I. then and there unlawfully, riotously, and routously did beat, wound, and ill treat, so that his life was greatly despaired of (c), and other wrongs to the said A. I. then and there unlawfully, riotously, and routously did, to the great damage of the said A. I. and against the peace of our said lord the king, his crown and dignity. [*Add a count for a common assault, as post.*]

For a riot, assault, and false imprisonment, and for obtaining money from the party falsely imprisoned in order to obtain his freedom (d).

That A. B. late of, &c. (and other defendants), being wicked, malicious, and evil-disposed persons, of unruly minds and turbulent tempers and dispositions, on, &c. with force and arms, at, &c. aforesaid, unlawfully, riotously, routously, and injuriously, did assemble and gather together, to disturb the peace of our said lord the king, and so being then and there assembled and gathered together, a very great riot, rout, tumult, and disturbance then and there did make and cause to be made, and in and upon one C. D. in the peace of God and our said lord the king, then and there being, unlawfully, riotously, routously and injuriously did make a violent assault, and him the said C. D. then and there did violently, riotously, and routously beat, bruise, wound, and ill treat, so that his life was despaired of (e); and him the said C. D. then and there, with force and arms, unlawfully, riotously, routously, and injuriously, against the will of the said C. D. and contrary to the laws of this realm, without any legal warrant, authority, or justifiable or probable cause

(a) Cro. C. C. 8th edit. 413. 7th edit. 669. Burn, J. Riot, 2 Stark. 64; see precedent and notes, ante, 488, 9.

(b) This allegation is unnecessary.

(c) This latter allegation is

not necessary, and when not the fact, should be omitted.

(d) See Cro. C. C. 8th edit. 413. 7th edit. 670, and precedent and notes, ante, 488, 9.

(e) See supra, note (c).

whatsoever, did imprison, and detain in prison there, for a long space of time, to wit, for the space of two hours then next following, and until the said C. D. had given unto them the said defendants the sum of three shillings, for his delivery and enlargement from the said imprisonment, and other wrongs to the said C. D. they the said defendants then and there unlawfully, violently, maliciously, riotously, routously, and injuriously, did, to the great damage of the said C. D. in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said defendants, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and injuriously did assemble and gather together to disturb the peace of our said lord the king, and so being then and there assembled and gathered together, as last aforesaid, a very great noise and disturbance then and there did make, and cause to be made, in and upon the said C. D. in the peace of God and our said lord the king then and there being, unlawfully and injuriously did make a violent assault; and him the said C. D. did then and there violently beat, bruise, wound, and ill treat, so that his life was greatly despaired of; and him the said C. D. then and there, with force and arms, unlawfully and injuriously, against the will of him the said C. D. and contrary to the laws of this realm, without any legal warrant, authority, or justifiable or probable cause whatsoever, did imprison, and detain in prison there for a long space of time, to wit, for the space of two hours then next following, and other wrongs to the said C. D. they the said defendants then and there unlawfully, violently, maliciously, and injuriously did, to the great damage, &c. [*As in the first count, add a count for a common assault, post, offences to the person.*]

[501]

Second count,
for disturbance,
&c. omitting the
riot and payment
of money.

Surrey. That A. B. late of, &c. (and other defendants) with divers other persons to the jurors aforesaid as yet unknown, to the number of twenty and more, being of unruly and turbulent tempers and dispositions, and unlawfully and wilfully intending to disquiet, disturb, and terrify one C. D. a subject of our lord the king, on, &c. with force and arms, at, &c. unlawfully, wilfully, and riotously, did assemble and meet together, with

For riotously as-
sembling and
hanging the ef-
figy of a person
(a).

(a) On this indictment all the defendants were convicted at Surrey Lent Assizes, A. D. 1782. See other forms, post, as to effigies, and see precedent and notes, ante, 488, 9.

[502]

intention to break and disturb the peace of our said lord the king, and being so assembled as aforesaid, a certain wooden gibbet, in a common highway there called S. L. and near to the dwelling-house of the said C. D. unlawfully, riotously, routously, and contemptuously, did erect, and a certain figure resembling a man, as and for the effigy of the said C. D. then and there unlawfully, riotously, routously, and contemptuously did hang and affix to the said gibbet, and did then and there threaten, that if they had the said C. D. they would hang him up alive, and did then and there unlawfully, riotously, routously, and contemptuously make a very great noise and disturbance for the space of three hours then next following and upwards, to the great damage, terror, and affrightment of the said C. D. to the great terror of all the king's subjects then and there being, in contempt, &c. to the evil, &c. and against the peace, &c. Second Count. And being then and there so assembled and met together as aforesaid, unlawfully, riotously, and contemptuously did make a very great noise and disturbance, and did then and there continue and remain making a very great riot, noise, and disturbance, and otherwise misbehaving themselves for the space of three hours, to, &c.

For a riot and pulling down an outhouse at common law (a).

That the defendants, [*stating their names and additions*] together with divers other persons, to the jurors aforesaid as yet unknown, being rioters, routers, and disturbers of the peace of our said lord the king, on, &c. with force and arms, that is to say, with sticks, staves, and other offensive weapons, at, &c. aforesaid, unlawfully, riotously, and routously, did assemble and gather together to disturb the peace of our said lord the king; and being so assembled and gathered together, one building, lodge, and out-house in the possession of C. D. of, &c. then and there unlawfully, riotously, and routously, did pull down, remove, break, and destroy, and other wrongs to the said C. D., to the great damage of the said C. D. and against the peace, &c. [*Second count for a common riot, as ante.*]

Information for riotous assembly with cutlasses, &c. breaking into a room, part of a warehouse, making a noise there-

[*Commencement as ante, 7.*] That defendants [*stating names and additions*] and divers other evil-disposed persons to the said coroner and attorney as yet unknown, being rioters, routers,

(a) See form, 4 Wentw. 151, and precedent and notes, ante, 488, 9.

and disturbers of the peace of our said lord the king (b), in, and assaulting divers persons on, &c. with force and arms, to wit, with cutlasses, sticks, there, and pipe staves, bludgeons, and other offensive weapons, at, &c. beating and aforesaid, did unlawfully, riotously, and routously assemble and meet together to disturb the peace of our said lord the king, and being so assembled and met together, did then wounding them, and breaking to pieces the furniture, &c. (a). and there, unlawfully, riotously, and routously break and enter into a certain room in and part of a certain warehouse or building of one C. D. there situate, and in which said room, divers and very many persons were then and there assembled and met together, and did then and there unlawfully, riotously, and routously make a great noise, tumult, and affray in the said room, in breach of the peace of our said lord the king, and then and there, with the said cutlasses, sticks, pipe staves, bludgeons, and other offensive weapons, unlawfully, &c. assaulted C. D. [and five others named,] and divers other persons whose names are to the said coroner and attorney as yet unknown, in the peace of God and our said lord the king, then [503] and there being in and near the said room, and them the said C. D., &c. and the said other persons then and there unlawfully, &c. cut, beat, dragged about, wounded, and ill-treated, so that their lives were thereby then and there greatly despaired of, and then and there unlawfully, &c. broke down, broke to pieces, demolished, and destroyed the window shutters, and divers other parts of the said warehouse or building, and then and there, unlawfully, &c. broke up, tore up, broke to pieces, damaged, spoiled, and destroyed the benches, chairs, and divers other articles of the furniture and fixtures of and in the said room, and other wrong to the said C. D., &c. then and there, unlawfully, riotously, and routously did, to the great damage of the said C. D., &c. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [Second count same as first, omitting the statement of the assembly and the demolition of the house. Third count for a common assault on all the parties injured. Six other counts for common assaults on each of them separately. Conclusion of informations, as ante, 7.]

(a) This information was drawn A. D. 1797, by an eminent pleader, against Roberts and others.

(b) See ante, 488, 9, why these words should be inserted.

For a riot in a house, and assaulting a lodger (a).

That the defendants [*inserting their names and additions,*] being respectively rioters, routers, and disturbers of the peace of our said lord the king, on, &c. with force and arms, at, &c. did unlawfully, riotously, and routously assemble and meet together to disturb the peace of our said lord the king, and being so assembled and met together, the dwelling-house of one C. D. there situate, then and there, unlawfully, riotously, and routously did break and enter, and then and there, unlawfully, riotously, and routously did make a great noise, riot, disturbance, and affray in the said dwelling-house, and then and there, unlawfully, riotously, and routously stayed and continued in the said dwelling-house, making such noise, riot, disturbance, and affray, then for a long space of time, to wit, for the space of three hours, and thereby, for and during all that time, there greatly disturbed, disquieted, terrified, and alarmed the said C. D. and his lodgers and inmates in the peaceable and quiet possession, use, occupation, and enjoyment of his dwelling-house, and then and there, unlawfully, &c. made an assault upon one E. F. a lodger and inmate of the said C. D. in the peace of God and our said lord the king, then and there being in the said dwelling-house, and him the said E. F. then and there unlawfully, riotously, &c. did then and there beat, wound, and ill-treat, so that his life was thereby then and there greatly despaired of, and other wrongs to the said E. F. then and there unlawfully, &c. did, to the great damage, &c. to the evil, &c. and against the peace, &c. [*Second count for a common assault upon the lodger.*]

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For riotously entering plaintiff's house and shop, and throwing shop goods into the street (b).

The jurors, &c. that defendants aforesaid, on, &c. with force and arms, at, &c. did unlawfully, riotously, routously, and tumultuously assemble and meet together to disturb the peace, &c. and being so unlawfully, riotously, routously, and tumultuously assembled and met together, with force and arms, did break and enter the shop of one C. D. at, &c. aforesaid, and did then in the said shop, unlawfully, and against the will of the said C. D.,* with force and arms, stay and continue in

(a) From the MS. collection of a gentleman at the bar, see precedent and notes, ante, 488, 9.

(b) See form, 4Wentw. 311. No indictment lies at common

law for a trespass committed to land or goods, unless there be a riot or a forcible entry, see 3 Burr. 1701, 1703, 1707, 1731. 8 T. R. 357. Ante, 488, 9. 13 East, 228.

the said shop for a long time, to wit, for the space of four hours, and then and there unlawfully did seize and take into their custody and possession, the goods and chattels of the said C. D. to wit, &c. [*here set out the goods,*] the goods and chattels of the said C. D. of the value of fifty pounds, then and there found in the said shop, which the said defendants did take, throw, and remove from and out of the said shop, and did throw, put, and lay, and throw and lay down the same into the public street and king's highway there in, &c. aforesaid, and in so doing, did unlawfully break, tear, rend, haul, damage, and spoil the said goods and chattels, and other wrongs did, to the great damage of the said J. and against the peace, &c. [*Second count for a forcible entry into the house of C. D. as post, offences to real property. Third count forcible entry and damaging goods as in the first.*]

Herefordshire. That A. B. late of, &c. C. D. late of, &c. and divers other evil-disposed persons to the number of twenty and more, to the jurors aforesaid as yet unknown, being rioters, routers, and disturbers of the peace of our said lord the king, on, &c. with force and arms, in, &c. aforesaid, did unlawfully, riotously, and routously assemble and meet together to disturb the peace of our said lord the king, and being so assembled and met together, the dwelling-house of one E. F. spinster, there situate, then and there unlawfully, riotously, and routously did break and enter, and in, and upon the said E. F. in the peace of God and our said lord the king, and in the said dwelling-house then and there being, unlawfully, riotously, and routously did make an assault; and her the said E. F. then and there unlawfully, riotously, and routously did beat, bruise, wound, and ill-treat, so that her life was greatly despaired of, and then and there, unlawfully, riotously, and routously put, cast, fling, and throw divers goods and chattels, to wit, &c. [*here set out the goods*] of her the said E. F. of the value of 40s. then being in the said dwelling-house from and out of the same, and thereby greatly broke, damaged, and spoiled the said goods and chattels, and other wrongs to the said E. F. then and there unlawfully, riotously, and routously did, to the great damage of the said E. F. to the evil example, &c. and against the peace, &c. [*Add a count for a common assault.*]

For a riot and assault in a dwelling house, and removing goods (a).

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(a) Cro. C. A. 16. 2 Stark. 419, and precedent and notes, ante, 488, 9.

Against three, for a riot before the house of G. H. and shooting off a loaded gun through his windows, and threatening to shoot him (a).

That A. B. late of, &c. C. D. late of, &c. and E. F. late of, &c. on, &c. with force and arms, &c. at, &c. in, &c. did unlawfully, riotously, rontously, and tumultuously assemble and gather together to disturb the peace of our said lord the king, and being so assembled and gathered together, did then and there unlawfully, riotously, rontously, tumultuously, violently, and outrageously make a great noise, disturbance, and affray near to and about the dwelling-house of one G. H. there situate, and did unlawfully, &c. stay and continue near to and about the dwelling-house of the said G. H. making such their noise, disturbance and affray for a long space of time, to wit, for the space of two hours, and during that time there did unlawfully, &c. shoot off a certain gun loaded with gunpowder and leaden shot at and against the said dwelling-house, and through certain windows parcel thereof, and thereby then and there not only greatly terrified and alarmed the said G. H. and his family, and disturbed and disquieted them in the peaceable and quiet possession, use, and occupation of the said dwelling-house, but also then and there broke to pieces, shattered and damaged the glass, to wit, twenty panes of glass of great value, then and there affixed and belonging to the said windows, and then and there with loud and horrid oaths and imprecations unlawfully, &c. menaced and threatened the said G. H. to shoot him through the body, and other wrongs to the said G. H. then and there unlawfully, &c. did, to the great damage of him the said G. H. and against the peace, &c. [*A count may be added omitting the statement of the riot, for shooting off the gun at windows of house, as post, "offences to real property," and ante, 23. Sed quære as to this count, as no indictment lies for a mere trespass, 3 Burr. 1701, 3, 6, 1751, ante, 23.*]

(a) See form, 4 Wentw. 309, and precedent and notes, ante, 488, 9.

INDICTMENTS FOR OFFENCES AGAINST PUBLIC PEACE, FOR INCITING TO A RIOT.

Yorkshire. That A. B. late of, &c. being a person of an evil, seditious, and turbulent disposition, and maliciously intending and endeavouring to disturb the tranquillity, good order, and government of this realm, and to endanger the persons and property of a great number of his majesty's quiet and peaceable subjects, on, &c. and on divers other days and times between that day and the first day of June in that year, at, &c. aforesaid, unlawfully, wickedly, and maliciously intended, devised and endeavoured, as much as in him lay, to raise and create insurrections, riots and tumults within this realm for the disturbance of his majesty's peace, and to the great terror and annoyance of his liege and peaceable subjects. And that the said A. B. in prosecution of his said wicked intention and purpose, and for the effecting and accomplishing thereof on the said, &c. and on the said other days and times at, &c. aforesaid, with force and arms unlawfully, wickedly, and maliciously incited, encouraged, and as much as in him lay endeavoured and laboured to persuade, instigate and prevail on divers liege subjects of our said lord the king, whose names to the jurors aforesaid are as yet unknown, inhabiting in the said parish of C. and in the neighbourhood of the same, with force and arms unlawfully, riotously and tumultuously to assemble and gather together to disturb the peace of our said lord the king, and to injure and annoy a great number of the peaceable subjects of our said lord the king in their persons and properties, and that by means and in pursuance of the said wicked instigations and endeavours of the said A. B. a great number of persons, to the number of one hundred and more to the jurors aforesaid as yet unknown, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, unlawfully, riotously, routously and tumultuously assem-

For inciting persons to make a riot (a).

First count, for inciting persons to assemble, and that in consequence of such incitement they did so.

(a) See a similar precedent, Cro. C. C. 8th edit. 420. Cro. C. A. 256. As to the criminality of incitements and solicitations to commit misdemeanors, see ante, 480, n. (a). 2 East, 17. 6 East, 474. If any person encourages or promotes, or takes part in riots, whether by words, signs, or

gestures, or by bearing the badge or ensign of the rioters, he is himself to be considered as a rioter, for, in this case, all are principals, 2 Caniph. 370. For a conspiracy to commit a riot, &c. see Cro. C. C. 8th ed. 422, and post, title "Conspiracies."

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Second count,
leaving out the
assembling.

bled and gathered together to disturb the peace of our said lord the king, and being so assembled and gathered together, did then and there unlawfully, riotously, routously, and tumultuously continue together in a riotous and tumultuous manner for a long time, that is to say, for the space of six hours then next following, and during all that time committed many great violent and enormous outrages in breach of the peace of our said lord the king, to the very great terror, disturbance and grievance not only of many of his said majesty's quiet and peaceable subjects then inhabiting and residing there, but also of all other of his said majesty's quiet and peaceable subjects then and there passing and repassing in and about their lawful affairs and business, in contempt of our said lord the king, in open violation of the laws, good order and government of this realm, to the evil and pernicious example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. being such person as aforesaid, and unlawfully, maliciously and wickedly devising, intending and endeavouring again to disturb the peace of our said lord the king, and to cause other insurrections, riots and tumults within this realm, to the great terror, annoyance and disturbance of his majesty's liege and peaceable subjects, afterwards, to wit, on the said, &c. at, &c. with force and arms aforesaid, unlawfully, wickedly, and maliciously incited, stirred up, and, as much as in him lay, endeavoured and laboured to persuade a great number of other liege subjects of our said lord the king, whose names to the jurors aforesaid are as yet unknown, with force and arms unlawfully, riotously, and tumultuously to assemble and gather together to disturb the peace of our said lord the king, and to terrify, annoy, disturb and injure many other of his said majesty's liege, peaceable and quiet subjects, in contempt, &c. in open violation of the laws, good order and government of this realm, to the evil and pernicious example, &c. and against the peace, &c.

INDICTMENTS, &c. FOR OFFENCES AGAINST PUBLIC PEACE, TUMULTUOUS PETITIONING.

Tumultuous pe-
titioning.

The offence of *Tumultuous Petitioning* is nearly allied to that of Riot. By 13 Car. 2. c. 5. no person "shall solicit labour, or procure the getting of hands or other consent of any

persons above the number of twenty or more, to any petition, complaint, remonstrance, declaration or other address to the king or both or either houses of parliament, for alteration of matters established by law in church or state, unless the matter thereof have been first consented unto and ordered by three or more justices of that county, or by the major part of the grand jury of the county or division of the county where the same matter shall arise, at their public assizes or general quarter sessions, or, if arising in London, by the lord mayor, aldermen, and commons in common council assembled, and that no person or persons whatsoever shall repair to his majesty or both or either of the houses of parliament, upon pretence of presenting or delivering any petition, complaint, remonstrance or declaration, or other addresses, accompanied with excessive number of people, nor at one time with above the number of ten persons; upon pain of incurring a penalty not exceeding the sum of one hundred pounds in money, and three months imprisonment without bail or main-prize, for every offence; which offence is to be prosecuted either in the court of K. B. or at the assizes or general quarter sessions, within six months after the offence committed, and proved by two or more credible witnesses." In the case of Lord George Gordon it was contended that the Bill of Rights by the declaration "that it is the right of the subjects to petition the king, and that all commitments and prosecution for such petitioning were illegal," virtually repealed this provision; but it was the clear opinion of the whole court, as delivered by Lord Mansfield, that the statute continued in full force, and was not intended to be affected by any subsequent enactment, Dougl. 592. There does not seem, however, to have been any prosecution under this statute.

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By the 57 Geo. 3. c. 19. s. 23. after reciting that it is highly inexpedient that public meetings or assemblies should be held near the houses of parliament, or near the courts of justice in Westminster-hall, on certain days, it is enacted that it shall not be lawful for any person to convene, or to give any notice for convening any person to convene, or to give any notice for convening any meeting consisting of more than fifty persons, or for any number of persons exceeding fifty, to meet in any street, square, or open place, in the city or liberties of Westminster, or county of Middlesex, within the distance of a mile from the gate of Westminster-hall (except such parts of

the parish of St. Paul, Covent Garden, as are within such distance), for the purpose of considering of or preparing any petition, &c. for alteration of matters in church or state on any day on which the two houses, or either house of parliament, shall meet and set, nor on any day on which the courts shall sit in Westminster-hall; and that if any meeting or assembly for such purposes shall be assembled or holden on such day, it shall be deemed an unlawful assembly, provided that this enactment shall not apply to any meeting for the election of members of parliament, or to persons attending upon the business of either house of parliament, or any of the said courts.

There is also the 37 Geo. 3. c. 79. for the suppression of seditious meetings and societies; also the 60 Geo. 3. c. 1. for preventing the training of persons to the use of arms, and to the practice of military evolutions and exercises. The 60 Geo. 3. c. 6. is expired, see sec. 40. of that act.

CHAPTER XI.

INDICTMENTS, &c. FOR OFFENCES AGAINST PUBLIC TRADE.

Bankrupt's Embezzlement and not Surrendering—Enhancing Price of Provisions by False Rumours—Forestalling, Engrossing, and Regrating—Obstruction in Purchasing Corn—Exercising Trades not having served Apprenticeship—Seducing Artificers—Exporting Machines—Usury, &c. &c.

THAT J. S. late of, &c. clothier, dealer, and chapman, Against a bankrupt for concealing his effects, on 5 Geo. 2. c. 30 (a). on, &c. was, and for a long time, to wit, for the space of six months and more before then, had been and was a clothier,

(a) This was the indictment on which Senior was convicted and executed; it was settled by a very eminent barrister now on the bench. The 5 Geo. 2. c. 30. and all other acts relating to bankrupts are now repealed by the 6 Geo. 4. c. 16. As a form under the latter act may be readily framed from the above precedent, it may be useful to insert it. Under the 6 Geo. 4. c. 16. s. 112. it is sufficient if the goods embezzled are of the value of £10. See the indictment on the statutes enacted before the 5 G. 2. c. 30. Trem. P. C. 239. and other precedents under the 5 Geo. 2. c. 30. Cro. C. 8th edit. 71 to 78. 2 Leach, 996. Stark. 2d edit. 568, and ante, 402 to 408. See a precedent for not surrendering and not making discovery of his estate

and effects, post, 523, for not submitting to be examined, Russ. & Ry. Crim. Cas. Page's case, 392.

Offence. By the 6 Geo. 4. c. 16. s. 112. it is enacted, "that if any person against whom any commission has been issued, or shall hereafter be issued, whereupon such person hath been or shall be declared bankrupt, shall not, before three of the clock, upon the forty-second day, after notice thereof in writing, to be left at the usual place of abode of such person, or personal notice, in case such person be then in prison, and notice given in the London Gazette of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be exa-

dealer, and chapman, and for all that time did use and exercise the trade of merchandize, by way of bargaining, exchange, bar-

mined before them from time to time upon oath, or being a Quaker, upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how and to whom upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings, relating thereunto (except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expence of his family); or if any such bankrupt shall not upon such examination deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife, and children); or if any such bankrupt shall remove, conceal, or embezzle any part of such estate to the value of £10 or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary, house or houses of correction, not exceeding seven years."

This law has been considered as so very severe, that in cases where it appeared the absence

of the defendant was occasioned rather by ignorance or accident than design, the lord chancellor has superseded the commission, in order to prevent the commencement of proceedings under it, 1 Atk. 222. 18 Ves. 18. 3 Ves. 238. The bankrupt will not be guilty of felony if he surrender before the last moment of the time allowed him; though it is both his interest and his duty so to do as soon as possible, 2 Burr. 1124. Cowp. 156. Where, by an innocent default he has omitted so to do, as in case of sickness, the chancellor will order the commissioners to appoint a meeting at which he may surrender, 6 Ves. 445. 1 Montague, B. L. 416. Amb. 307. But this will be no bar to a prosecution for felony, 6 Ves. 445. However, in a late case it was decided, that if a bankrupt surrender to his commission, and at the time of such surrender refused to answer particular questions concerning his property, but takes the oath and assigns as his reason for not answering, that he intends to dispute the commission, the refusal to answer such question would not be a capital offence within the stat. 5 G. 2. c. 30. s. 1. Page's case, Russ. & Ry. C. C. 392. 3 J. B. Moore, 656. 1 B. & B. 308. 7 Price, 616. S. C. As to the power of the commissioners to examine and commit, see 2 Burr. 1122. 2 Ld. Raym. 851. 1 Salk. 348. 2 Stra. 880. 2 Bla. Rep. 1035. And see, in general, Bac. Abr. Bankrupt, J. Cro. C. C. 75 to 77.

Indictment. The principal nicety in framing the indict-

tering, and chevisance, and did seek his trade of living by buying and selling, to wit, at, &c. aforesaid, and that the said

ment is the recital of the proceedings before and under the commission. *Quære*, if it be necessary to state the nature of the act of bankruptcy. Forsyth's case, Russ. & Ry. Cr. Cases, 274. It must be stated that the commission was *duly* awarded, and the mere allegation that it was issued out and awarded will not suffice, 1 Leach, 10, and it must not be stated, that it was issued out of the Court of Chancery, 3 Camp. 58. 1 Rose B. C. 222. The words of the statute must also be attended to with the strictest precision. Thus in an indictment on the 5 Geo. 2. as it is there stated, "After notice in the London Gazette, that such commission hath been issued, the bankrupt shall surrender himself to the commissioners named in the said commission *or the major part of them*," where the notices set forth on the record, required the defendant to surrender to all the commissioners, omitted the qualifying expressions, the indictment was held invalid, 1 Leach, 10. And, since the 5 Geo. 2. provided, that "the bankrupt shall have notice that such commission has issued, and of the time and place of meeting of the commissioners *therein named*," where one of the notices said that he must surrender to *three* of them without *naming* any of the rest, the proceedings were held defective, 1 Leach, 10. An averment must also be introduced, that the commissioners did hold a sitting in which they should be named, and a notice requiring the bankrupt to surrender *to the commissioners at*

Guildhall will be too uncertain, 1 Leach, 10. In stating the property concealed, it should be stated with certainty; if part of it be stated with uncertainty, and the value be stated as of the whole of the property *collectively*, the indictment will be bad. Forsyth's case, R. & R. C. C. 274. It should seem better to state that each of the articles, &c. were of the value of £10 or more. *id.* In an indictment against a bankrupt he was charged in feloniously making default in not submitting to be examined, *quære*, whether this is sufficient, without charging him with a refusal to surrender, *and* submit to examination, 3 J. B. Moore, 656. But though the indictment be defective in all these circumstances, the court will not quash it upon motion, but compel the party indicted to plead, and upon his being called on for his defence, he will be discharged by a verdict of acquittal, *id.* 1 Leach, 10.

Evidence. The prosecutor must, on the trial of every indictment, be prepared to prove all the proceedings by which the prisoner was made a bankrupt, as well as the notices requiring him to surrender, 1 Atk. 211. And the chancellor will not aid him by ordering the clerk to the commission to attend on the trial with the proceedings, but they must be proved by other methods, *id.* *ibid.* The trading, the petitioning creditor's debt, the act of bankruptcy, the issuing of the commission, and all proceedings under it, must be strictly shown in evidence.

Petitioning creditor's debt.

J. S. so as aforesaid, using and exercising the trade of merchandize by way of bargaining, exchange, bartering, chevisance, and seeking his trade of living by buying and selling as aforesaid, on the said, &c. at, &c. aforesaid, became and was indebted to one J. D. in the sum of 100*l.* and upwards for a just and true debt (*a*), and being so indebted and so using and exercising the trade of merchandize by way of bargaining, exchange, bartering, and chevisance, and seeking his trade of living by buying and selling as aforesaid, he the said J. S. on the said, &c. at, &c. aforesaid, became a bankrupt (*b*), within the intent and meaning of the several statutes made and then and yet in force concerning bankrupts or some or one of them; and that afterwards, to wit, on, &c. the said J. D. then being such creditor of the said J. S. as aforesaid, and the said J. S. then being indebted to him as aforesaid, on the petition of the said J. D. as well for himself as for all other the creditors of the

3 Campb. 96. 1 Rose B. C. 223. An averment, however, that the commission was issued under the great seal of Great Britain will be sufficiently proved though the document produced be under the seal of Great Britain and Ireland. 1 Taunt. 71. 2 Leach, 997. By the 6 Geo. 4. c. 16. s. 96. no commission, adjudication, or assignment or certificate, &c. shall be received as evidence, unless entered on record, as therein mentioned. In order to prove the notice in the Gazette, the production of Gazette itself will be sufficient, without proving its being bought of the Gazette printer, or where it came from, Forsyth's case, R. & R. C. C. 277. *Semble*. On an indictment for concealing effects, if the evidence is that the bankrupt on his last examination stated, that a book given in by him contained an account of all his effects, it is incumbent on the prosecutor to produce the book, or account for it, that it may be seen whether that book

mentions the property or not. 1 Russ. & Ry. Crim. Cas. 70, Evans's case. In his *defence* the prisoner cannot set up a secret act of bankruptcy prior to the commission, in order to render it invalid, *id. ibid.* nor will he be able to effect this, by showing that it is not stamped according to 44 Geo. 3. c. 98. (now 55 Geo. 3. c. 184.) because it is not included in that statute, 1 Taunt. 71. 2 Leach, 997. The defendant may procure an acquittal by proving that he was an infant at the time of contracting the debts mentioned in the indictment, for though such obligations are only voidable by him at his election, no man can be made a bankrupt for debts which he was not compellable to discharge, 1 *Ld. Raym.* 443.

(*a*) In an indictment against Cooke, Lewes, 1816, however, it stated the subject-matter of debt.

(*b*) *Quære*, if necessary to state the nature of the act of bankruptcy, Russ. & Ry. Cr. Cas. Forsyth's case, 274.

said J. S. made and exhibited in writing to the right honorable J. Lord E. then being Lord High Chancellor of Great Britain (a), a certain commission of our lord the king sealed with the great seal of the United Kingdom of Great Britain and Ireland, founded upon the statutes made and provided against bankrupts (b), was duly awarded and issued out by the said Lord High Chancellor (c), to wit, at Westminster, in the county of Middlesex, and to the jurors aforesaid now here shown, bearing date at Westminster the said, &c. directed to J. P., H. F. M. esquires, T. L., T. B., and T. L. P. gentlemen, in and by which said commission our said lord the king did name, assign, appoint, constitute, and ordain them the said J. P., H. F. M., T. L., T. B., and T. L. P. the special commissioners of our said lord the king, thereby giving full power and authority to them four, or three of them, the said J. P. or H. F. M. to be one, to proceed according to the statutes in the said commission mentioned, and all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts, and other things whatsoever; but also concerning all other persons who, by concealment, claim, or otherwise did or should offend, touching the premises or any part thereof, contrary to the true intent and meaning of the said statutes, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the creditors of the said J. S. as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes, willing and commanding them four, or three of them, the said J. P. H. or F. M. to be one to proceed to the execution and accomplishment of that our said lord the king's commission, according to the true intent and meaning of the said statutes with all diligence and effect, as by the said commission doth more fully appear, and that afterwards, to wit, on, &c. to wit, in, &c. aforesaid, the major part of the said commissioners in the said commission named, to wit, the said J. P. H., T. B., and T. L. P. administered to and severally took before each other the oath of a commissioner of bankrupts, prescribed and specified in and by an act of parliament

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Administering of
oaths to commis-
sioners.

(a) See n. (a), ante, 509, 10, 511, 12; and 1 Taunt. 71.

(b) 1 Leach, 13 & 12.

(c) It should not be stated

that it was issued out of the Court of Chancery, 3 Campb. 58. 1 Rose, B. C. 222.

The commis-
sioners declare
the party a bank-
rupt.

Notice to the
bankrupt to ap-
pear, &c.

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made in the fifth year of the reign of his late majesty king George the Second; intituled, "An act to prevent the committing of frauds by bankrupts," before they proceeded to act in the execution of the said commission, according to the direction of the said act, and required to be taken by such commissioners, and did then and there respectively sign a memorial thereof, as by the said memorial by them the said commissioners entered and kept among the depositions and other proceedings on the said commission doth appear; and that afterwards, to wit, on the said, &c. to wit, in, &c. aforesaid, the major part of the said commissioners in the said commission named, appointed, and authorized, to wit, the said J. P. H., T. B., and T. L. P. did proceed under and in the execution of the said commission, and did then and there find that the said J. S. did, before the date and issuing forth of the said commission against him, become bankrupt, within the true intent and meaning of the several statutes made and then in force concerning bankrupts, or some or one of them, and did then and there duly adjudge and declare the said J. S. bankrupt accordingly. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. notice in writing, signed by them the said J. P. H., T. B. and T. L. P. the major part of the said commissioners, in the said commission named, appointed, and authorized, was, according to the direction of the statute in such case made and provided, delivered to the said J. S. personally, to wit, at, &c. aforesaid, that the said commission of bankrupt had been issued against him the said J. S. and that he had been thereupon declared bankrupt, and the said J. S. was by them the said commissioners last named, thereby required and commanded personally to be and appear and surrender himself to and before the major part (a) of the commissioners in the said commission named, on the 31st day of October, in, &c. aforesaid, the 1st day of November in the same year, and the 20th day of November in the same year, at 12 of the clock at noon of each of the said days, at the sessions-house in W. in the said county of Y. then and there to be examined, according to the directions of the statute made in the fifth year of the reign of his late majesty king George the Second, intituled, "An act to prevent the committing of frauds by bankrupts," and thereupon to make a full discovery and disclosure of all his estate

and effects, and in all things to conform himself to the several statutes made concerning bankrupts; and afterwards, to wit, on, &c. (a) notice was also given and published, according to the statute in that case made and provided, in the London Gazette, to wit, at the, &c. aforesaid, that a commission of bankrupt was awarded and issued forth against the said J. S. and that he being declared a bankrupt, was thereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the said 31st day of October, in, &c. aforesaid, and the 1st and 20th days of November in the same year, at 12 of the clock at noon, on each of those days, at the sessions-house in W. and make a full discovery and disclosure of his estate and effects, and at the last sitting, the said bankrupt was thereby required to finish his examination. And the jurors, &c. do further present, that afterwards, to wit, on, &c. the major part of the said commissioners named, authorized, and appointed in and by the said commission, to wit, the said J. P. H. and T. B., and T. L. P. did meet at the sessions-house in W. aforesaid, in the county of Y. aforesaid, and did proceed under and in the execution of the said commission, and they the said last-mentioned commissioners did then and there examine the said J. S., and the said J. S. then and there appeared and submitted himself to be examined by the said last-mentioned commissioners, but not being then and there prepared to make a full disclosure and discovery of his estate and effects, then and there desired further time for the doing thereof, which was then and there granted to him accordingly; and that afterwards, to wit, on, &c. at the sessions-house in W. aforesaid, the major part of the commissioners named and authorized in and by the said commission, to wit, the said J. P. H. T. B. and T. L. P. did meet, pursuant to the said notice, and did proceed under and in the prosecution of the said commission, that the said J. S. did not then and there make any disclosure or discovery of his estate and effects. And the jurors, &c. do further present, that afterwards, to wit, on, &c. at the said session house, also called the New Court House in W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners named, ap-

Notice in the Gazette.

First sitting of the commissioners, 31st Oct. 1810.

Second meeting of commissioners.

Third sitting from which an adjournment.

(a) *Quære*, if not necessary that time and venue should be laid to this averment of putting notice in the Gazette, Russ. &

Ry. Crim. Cases, Forsyth's case, 274. *Quære*, if necessary to state the notice, *id.* 277.

Fourth sitting adjourned, last examination.

pointed, and authorized in and by the said commission, to wit, the said J. P. H., T. B., and T. L. P. did meet in pursuance of the said notices, and did proceed under and in execution of the said commission; and the said J. S. then and there appeared and submitted himself, and was examined by the said last-mentioned commissioners touching his estate and effects, but the said bankrupt not being able satisfactorily to answer all such questions as the said last-mentioned commissioners had put to him, touching his the said J. S.'s estate and effects without a further investigation of his books and papers, they the said last-mentioned commissioners did therefore then and there, adjourn the said bankrupt's last examination until the 21st day of November then instant, at that place at 12 o'clock at noon of the same day, at which time and place, that is to say, on the said 21st day of November in the 51st year of the reign aforesaid, at the sessions-house aforesaid, in W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners named, appointed, and authorized in and by the said commission, to wit, the said J. P. H., T. B., and T. L. P. did meet and did proceed under and in the execution of the said commission, and thereupon the said J. S. then and there, duly appeared before the said last-mentioned commissioners, in order to finish his examination pursuant to the said notice in the London Gazette for that purpose given, and they the said last-mentioned commissioners did then and there enter into the final examination of him the said J. S. pursuant to the same notice; and the said J. S. did then and there upon his corporal oath, (the said last-mentioned commissioners then and there having sufficient and competent power and authority to administer the same oath to the said J. S. in that behalf,) say, depose, and swear (amongst other things) that the book marked A., which was then produced and delivered up by the said J. S., together with the goods and things seized by and under the said commission, did contain and were a full and true disclosure and discovery of all his the said J. S.'s estate and effects both real and personal, and how, and in what manner, to whom and upon what consideration, and at what time or times he had disposed of, assigned, or transferred any of his goods, wares, and merchandizes, money, or other estate and effects, and all books, papers, and writings relating thereto, of which he was possessed, or in or to which he was any ways interested or intitled, or which any person or persons before had or then had in trust for him, or to his use at any time before or after the

issuing of the said commission, or whereby the said J. S. or his family, had or might have or expect any profit, possibility of profit, benefit, or advantage whatsoever, except only such part of his estate and effects as had been really and *bonâ fide* before sold and disposed of in the way of his trade and dealings, and except such sums of money as had been laid out in the ordinary expence of himself and family, and that at the time of that (his the said J. S.'s) examination, he had delivered up to the said commissioners named, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate, and effects, and all books, papers, and writings relating thereto, as were then in his custody, possession, or power (the necessary wearing apparel of himself and children only excepted;) and the said J. S. then and there further said, that he had not removed, concealed, or embezzled any part of his estate real or personal, or any books of accounts, papers, or writings relating thereto, with an intent to defraud his creditors; and the said J. S. then and there further said, that he had got two stalls in the cloth hall at Leeds, and that since his bankruptcy, his wife paid to Mr. M. M. out of money belonging to the said J. S. the sum of £39 and upwards, to take up a returned bill. And the jurors, &c. do further present, that the said J. S. did not, upon such his said examinations as aforesaid, or either of them, before the major part of the said commissioners in the said commission named, appointed, and authorized, after he the said J. S. became bankrupt, and after the issuing of the said commission as aforesaid, fully and truly disclose and discover all his estate and effects of which he was possessed, or in or to which he was interested or entitled before or after the time of the issuing the said commission as aforesaid against him, except such part of his estate and effects as had been really and *bonâ fide* sold and disposed of in the way of his said trade and dealing, and except such sums of money as had been laid out in the ordinary expences of his family; nor did he the said J. S. upon such his said last-mentioned examination, or before or afterwards, deliver up to the said commissioners, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate, and effects, and all books, papers, and writings relating thereto, as were at the time of his said examinations, or either of them, in his custody, possession, or power (the necessary wearing apparel of himself, his wife, and children only

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Embezzlement by
the defendant.

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excepted), but he the said J. S. not regarding the laws and statutes of the realm, nor the pains and penalties therein contained, after he became a bankrupt, and after the issuing of the said commission against him, and after he was so adjudged and declared a bankrupt as aforesaid, and had notice thereof as aforesaid, to wit, on, &c. with force and arms, in, &c. aforesaid, wilfully, fraudulently, and feloniously, and with intent to defraud his the said J. S.'s creditors in that behalf, did conceal and embezzle part of his said personal estate to the value of £20 and more, the same or any part thereof not being the necessary wearing apparel of himself, his wife, or children, that is to say (a), three bags of wool, called Spanish wool, of the value of £150; three bags of other wool, of the value of other £150; two packs of other wool, of the value of £50; thirteen pieces of kerseymere, of the value of £180; two pieces of woollen cloth, of the value of £30, with intent to defraud his the said J. S.'s creditors, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Second count.

Trading.

And the jurors, &c. do further present, that the said J. S. on the said, &c. was and for a long time, to wit, for the space of six months and more, before then had been and was a clothier, dealer, and chapman, and for all that time did use and exercise the trade of merchandize, by way of bargaining, exchange, bartering, and chevisance, and did seek his trade of living by buying and selling, to wit, at, &c. aforesaid. And that the said J. S. so as aforesaid, using and exercising the trade of merchandize, by way of bargaining, exchange, bartering, and chevisance, and seeking his trade of living by buying and selling, as last aforesaid, on the said, &c. at, &c. aforesaid, became and was indebted to the said J. D. in the sum of £100 and upwards, for a just and true debt, and being so indebted, and so using and exercising the trade of merchandize, by way of bargaining, exchange, bartering, and chevisance, and seeking his trade of living by buying and selling, as last aforesaid, he the said J. S. on the said, &c. at, &c. aforesaid, became bankrupt within the intent and meaning of the several statutes made, and then and yet in force, concerning bankrupts, or some or one of them;

(a) As to describing the property, see ante, 509, note (a). Russ. & Ry. Crim. Cases, 274, Forsyth's case.

and that afterwards, to wit, on the said, &c. on the petition of the said J. D. so then being a creditor of the said J. S. and the said J. S. then being indebted to him as last aforesaid, as well for himself as for all other the creditors of the said J. S. made and exhibited in writing to the right honorable John Lord Eldon, then being Lord High Chancellor of Great Britain, a certain commission of bankrupt under the great seal of Great Britain, founded upon the statutes made and provided against bankrupts, was duly awarded and issued out (a) against the said J. S. the bankrupt aforesaid, by the name and description of J. S. of, &c. bearing date at Westminster, the said, &c. directed to the said J. P. H., F. M. esqrs. T. L., T. B., and T. L. P. gentlemen, in and by which said commission, our said lord the king did name, assign, appoint, constitute, and ordain them the said J. P. H., F. M., T. L., T. B., and T. L. P. the special commissioners of our said lord the king, thereby giving full power and authority to them, four or three of them, the said J. P. H., or F. M., to be one, to proceed according to the statutes in the said commission mentioned, and all statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts and other things whatsoever, but also concerning all other persons who, by concealment, claim, or otherwise, did or should offend, touching the premises or any part thereof, contrary to the true intent and meaning of the said statutes, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the creditors of the said J. S., as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes, willing or commanding them four, or three of them, the said J. P. H. or F. M. to be one to proceed to the execution and accomplishment of that our said lord the king's commission, according to the true intent and meaning of the said statutes, with all diligence and effect, as by the said last-mentioned commission doth more fully appear, by virtue of which said last-mentioned commission and by force of the said several statutes, to wit, on the said, &c. in, &c. aforesaid, the major part of the said commissioners, in the said last-mentioned commission named and authorized, to wit, the said J. P. H., T. B., and T. L. P., did in due manner find that the said J. S. did, before

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Commissioners
declare the party
a bankrupt.

(a) 1 Taunt. 71. 1 Leach, 10.

Notice to bankrupt to appear.

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Notice in the Gazette.

the date and suing forth of the said last-mentioned commission against him, become bankrupt, within the true intent and meaning of the several statutes made and then in force concerning bankrupts, some or one of them, and did then and there adjudge and declare him a bankrupt accordingly. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. notice in writing signed by them the said J. P. H., T. B. and T. L. P., the major part of the commissioners in the said last-mentioned commission named, was, according to the direction of the statute in such case made and provided, delivered to the said J. S. personally, to wit, at, &c. aforesaid, that the said last-mentioned commissioners of bankrupt had been issued against him the said J. S., and that he had been thereupon declared bankrupt; and the said J. S. was by them the said commissioners last named thereby required and commanded personally to be and appear and surrender himself to and before the major part of the commissioners in the said last-mentioned commission named, on the 31st day of October, in, &c. aforesaid, the 1st day of November in the same year, and the 20th day of November in the same year, at twelve of the clock at noon of each of the same days, at the sessions-house in W., in the said county of Y., then and there to be examined according to the directions of the statute made in the fifth year of the reign of his late majesty king George the Second, intituled, "An act to prevent the committing of frauds by bankrupts;" and thereupon to make a full discovery and disclosure of all his estate and effects, and in all things to conform himself to the several statutes made concerning bankrupts, and afterwards, to wit, on, &c. thereupon notice was also given and published according to the statute in that case made and provided, in the London Gazette, to wit, at, &c. aforesaid, that a commission of bankrupt was awarded and issued forth against the said J. S. and that he being declared a bankrupt, was thereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the said 31st day of October, in, &c. aforesaid, the 1st and 20th days of November in the same year, at 12 of the clock at noon of each of those days, at the sessions-house in W., and made a full discovery and disclosure of his estate and effects, and at the last sitting the said bankrupt was thereby required to finish his examination. And the jurors, &c. do further present, that afterwards, to wit, on, &c. the major part of the said commissioners, named, authorized, and-appointed, in and by the said last-mentioned commission,

to wit, the said J. P. H., T. B., and T. L. P. did meet at the sessions-house in W. aforesaid, in the county of Y. aforesaid, and did proceed under and in the execution of the said last-mentioned commission; and that afterwards, to wit, on, &c. at the sessions-house in W. aforesaid; the major part of the commissioners named and authorized in and by the said last-mentioned commission, to wit, the said J. P. H., T. B., and T. L. P. did meet pursuant to the said notices, and did proceed under and in the execution of the said last-mentioned commission. And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the said, &c. at the said sessions-house, called the new court-house in W. aforesaid, in the county of Y. aforesaid, the major part of the said commissioners, named, appointed and authorized, in and by the said last-mentioned commission, to wit, the said J. P. H. T. B. and T. L. P. did meet in pursuance of the said notices, and did proceed under and in execution, of the said last-mentioned commission, and the said last-mentioned commissioners did then and there adjourn the said bankrupt's last examination, until the 21st day of November then instant at that place, at 12 o'clock at noon of the said day, at which time and place, that is to say, on the said, &c. at the sessions house-aforesaid, in, &c. aforesaid, the major part of the said commissioners, named, appointed, and authorized, in and by the said last-mentioned commission, to wit, the said J. P. H., T. B., and T. L. P. did meet and did proceed under, and in the execution of the said last-mentioned commission, and thereupon the said J. S. then and there duly appeared before the said last-mentioned commissioners, in order to finish his examination pursuant to the said last-mentioned notice in the London Gazette for that purpose given, and they the said last-mentioned commissioners, did then and there enter into the final examination of him the said J. S. pursuant to the same notice, and finally examine him touching and concerning the discovery of his estate and effects. And the jurors, &c. do further present, that the said J. S. did not, upon such his said last-mentioned examination, or afterwards, at any time whatsoever, before the major part of the said commissioners, in the said last-mentioned commission named and authorized, after he the said J. S. became bankrupt, and after the issuing of the said commission as aforesaid, fully and truly disclose and discover all his effects and personal estate of which he was possessed, or in or to which he was interested or entitled, before or after the time of

Third sitting,
from which an
adjournment.

Fourth sitting ad-
journed last ex-
amination.

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the issuing of the said last-mentioned commission as aforesaid against him, except such part of his estate and effects as had been really and *bonâ fide* sold and disposed of in the way of his said trade and dealing, and except such sums of money as had been laid out in the ordinary expences of his family, nor did he the said J. S., upon such his said last examination as aforesaid, or before, or afterwards, deliver up to the said commissioners, or to the major part of them, or under the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate, and effects as were then, that is to say, at the time of his said last-mentioned examination, in his power, the necessary wearing apparel of himself, his wife and children only excepted : but he the said J. S. not regarding the laws and statutes of this realm nor the pains and penalties therein contained, after he became a bankrupt, and after the issuing of the said last-mentioned commission against him, and after he was so adjudged and declared bankrupt as aforesaid, and had notice thereof as aforesaid, to wit, on, &c. with force and arms, in, &c. aforesaid, wilfully, fraudulently and feloniously, did remove, conceal and embezzle part of his said personal estate to the value of £20 and more, of which he was possessed, the same or any part thereof not being the necessary wearing apparel of himself, his wife or children, that is to say, other three bags of wool called Spanish wool, of the value of £150; other three bags of wool, of the value of other £150; other two packs of other wool, of the value of other £50; other thirteen pieces of kerseymere, of the value of other £180; and other two pieces of woollen cloth, of the value of other £30, with an intent to defraud his the said J. S.'s creditors, against the form of the statute, &c. and against the peace of, &c.

Third count.

[521] And the jurors, &c. do further present, that the said J. S. on the said, &c. was, and for a long time, to wit, for the space of six months, and more, before the day and year last aforesaid, had been and was a clothier, dealer, and chapman, and for all that time did use and exercise the trade of merchandize, by way of bargaining, exchange, bartering, and chevisance, and did seek his trade of living, by buying and selling, to wit, at, &c. aforesaid; and that he the said J. S. so as last aforesaid, using and exercising the trade of merchandize, and seeking his trade of living in manner last aforesaid, on the said, &c. at, &c. aforesaid, became and was indebted to the said J. D. in the sum of £100 and upwards, and being so indebted, and so using and

exercising the trade of merchandize, and seeking his trade of living in manner last aforesaid, he the said J. S. on the said, &c. at, &c. aforesaid, became a bankrupt (within the intent and meaning of the several statutes made, and then and yet in force concerning bankrupts, or some or one of them), and that afterwards, to wit, on, &c. on the petition of the said J. D. so then being a creditor of the said J. S. as last aforesaid, a commission of bankrupt, bearing date the day and year last aforesaid, was in due manner awarded and issued out against the said J. S. directed to the said J. P. H., F. M. esquires, T. L., T. B., and T. L. P., to wit, at, &c. aforesaid, whereupon the said J. S. afterwards, to wit, on the said, &c. at, &c. aforesaid, was by the said J. P. H., T. B., and T. L. P. the major part of the said commissioners, in the said last-mentioned commission named and authorized in due manner, found and declared a bankrupt; and that afterwards, to wit, on the said, &c. at, &c. aforesaid, notice thereof in writing was delivered to the said J. S. personally, to wit, at, &c. aforesaid. And that afterwards, to wit, on the said, &c. in the reign aforesaid, notice was also given in the London Gazette, that such last-mentioned commission had been issued, and of the time and place of meeting of the said commissioners therein named, or the major part of them, to wit, on the said 31st day of October, in, &c. aforesaid, the 1st day of November, in the 51st year aforesaid, and the 20th day of November in the same year, at twelve of the clock at noon, of each of the said days, at the sessions-house in W. (meaning W. in the said county of Y.) And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. until which day the final examination of him the said J. S. was duly adjourned and postponed, at twelve of the clock at noon, at the sessions-house in W, aforesaid, the major part of the said commissioners in the said last-mentioned commission named and authorized, to wit, the said J. P. H., T. B., and T. L. P., did meet and did proceed in the final examination of him the said J. S. And the said J. S. did then and there submit himself to be examined by and before them the said last-mentioned commissioners. And the jurors, &c. do further present, that the said J. S. did not, upon such his said last-mentioned examination, before the said last-mentioned major part of the said commissioners, or at any other time or place, before the said commissioners, in the said last-mentioned commission named, or the major part of them, after he the said J. S. became bankrupt as aforesaid, and after

the issuing of the said commission as aforesaid, within forty-two days after the giving the said notice to him the said J. S. as aforesaid, or at any other time, fully and truly disclose and discover all his estate and effects of which he was possessed, or in or to which he was interested or entitled, before or after the time of issuing of the said last-mentioned commission, against him, except such part of his estate and effects as had been really and *bonâ fide* before sold or disposed of in the way of his trade and dealing, and except such sums of money as had been laid out in the ordinary expence of his family, nor did he the said J. S. upon such last-mentioned examination, or before or afterwards deliver up to the said-mentioned commissioners, or the major part of them, in the said last-mentioned commission named, or to the assignees chosen under the said last-mentioned commission, or to any or either of them, all such part of his goods, wares, and merchandize, money, estate, and effects, as, at the time of the said last-mentioned examination of him the said J. S. was in his possession, custody, or power (his necessary wearing apparel, and the necessary wearing apparel of his wife and children only excepted). But he the said J. S. not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after he became a bankrupt, and after the time of the issuing of the said last-mentioned commission against him as last aforesaid, and after he was adjudged and declared a bankrupt as last aforesaid, and had notice thereof as last aforesaid, to wit, on the said, &c. with force and arms, in, &c. aforesaid, wilfully, maliciously, fraudulently, and feloniously did conceal and embezzle part of his said personal estate, to the value of £20 and more, the same, or any part thereof, not then being the necessary wearing apparel of himself, his wife or children, that is to say, other three bags of wool, called Spanish wool, of the value of £150; other three bags of other wool, of the value of other £150; other two packs of other wool, of the value of other £50; other thirteen pieces of kerseymere, of the value of other £180; and other two pieces of woollen cloth, of the value of other £30, with intent to defraud his the said J. S.'s creditors, against the form of the statute, &c. and against the peace, &c.



BANKRUPT'S NOT SURRENDERING.

[*State the trading, petitioning creditors' debt, bankruptcy, issuing of the commission, and the declaring the defendant a bankrupt, as in the last precedent, and then as follows.*] And the jurors, &c. do further present, that afterwards, to wit, on, &c. notice in writing signed by them the said J. H., J. S., and L. B. the major part of the said commissioners in and by the said commission named and authorized, was, according to the direction of the statute in such case made and provided, delivered to the said W. R. personally, to wit, at, &c. aforesaid, (he the said W. R. then being in prison) that the said commission of bankruptcy had been awarded and issued against him the said W. R. and that the major part of the commissioners in and by the said commission named and authorized, had declared him the said W. R. a bankrupt, and the said W. R. was by them the said three commissioners lastly above named, thereby summoned and required personally to be and appear before the commissioners in the said commission named, or the major part of them, on the first, second, and twenty-sixth days of June then next, at the house of Mrs. S. G. the hotel in, &c. aforesaid, at eleven of the clock in the forenoon, on each of the same days, then and there to be examined, and to make a full and true discovery and disclosure of all the estate and effects of him the said W. R. according to the direction of the several statutes made and then in force concerning bankrupts, and particularly the statute passed in the fifth year of the reign of his late majesty king George the Second, intituled, "An act to prevent the committing of frauds by bankrupts." And afterwards, to wit, on, &c. notice was also given and published, according to the statute in that case made and provided, in the London Gazette, to wit, at, &c. aforesaid, that a commission of bankrupt was awarded and issued forth against the said W. R. and that he being declared a bankrupt, was thereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the first, second, and twenty-sixth days of June then next, at eleven

On 5 Geo. 2. c. 30, against a bankrupt, for neglecting to surrender himself, and for neglecting to give any information respecting his effects (a).

(a) This was the indictment against Roberts, A. D. 1815, on which he was convicted; it was settled by an eminent

barrister now on the bench. See the notes to the precedent, ante, 509.

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o'clock in the forenoon, on each of the same days, at the hotel in, &c. aforesaid, and make a full discovery and disclosure of his estate and effects, and at the last sitting the said bankrupt was thereby required to finish his examination. And the jurors, &c. do further present, that afterwards, to wit, on, &c. the said major part of the said commissioners named and authorized in and by the said commission, to wit, the said J. H., J. S., and L. B. did meet at the said house of S. G. aforesaid, then being the hotel aforesaid, in, &c. aforesaid, and did then and there further proceed in the execution of the said commission, pursuant to the notice so given and published in the London Gazette as aforesaid for that purpose. And that afterwards, to wit, on, &c. at the said house of S. G. aforesaid, then being the hotel aforesaid, in, &c. aforesaid, the said major part of the commissioners named and authorized in and by the said commission, to wit, the said J. H., J. S., and L. B. did meet pursuant to the said notice so given as last aforesaid, and did proceed further in the execution of the said commission, but that the said W. R. did not then surrender himself to them the said commissioners last named, nor did he then make any disclosure or discovery of his estate and effects, or send any excuse why he the said W. R. did not so surrender himself and make such disclosures and discoveries as last aforesaid. And the jurors, &c. do further present, that afterwards, to wit, on, &c. to wit, at, &c. aforesaid, the said J. A. being one of the commissioners in and by the said commission named and authorized, before he began to put the said commission into execution, did take the said oath prescribed and specified in and by the said act of parliament made in the fifth year of the reign of his said late majesty king George the Second, intituled "An act to prevent the committing of frauds by bankrupts," pursuant to the directions of the said last-mentioned act, and that he the said J. A. together with the said J. H. and J. S. they the said J. A., J. H., and J. S. then being three of the commissioners named and authorized in and by the said commission, did then and there respectively sign a memorial thereof, as by the said memorial by them the said last-mentioned three commissioners entered and kept among the depositions and other proceedings on the said commission, doth appear. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. the major part of the said commissioners in and by the said commission named and authorized, to wit, the said

J. H., J. S., and J. A. did meet at the said house of the said S. G. aforesaid, then being the hotel aforesaid, in, &c. aforesaid, pursuant to the said notice so given in the London Gazette as last aforesaid, and the said last-mentioned major part of the said commissioners, to wit, the said J. H., J. S., and J. A. did thereupon at the said last-mentioned meeting at, &c. aforesaid, on the said, &c. defer the taking of the examination of the said W. R. until the fourteenth day of August then next, and did thereby accordingly adjourn the said last-mentioned meeting to the said fourteenth day of August in the year last aforesaid, at eleven o'clock in the forenoon of the same day at the said house of S. G. the hotel in, &c. aforesaid, for the purpose last aforesaid. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. the said J. H., J. S. and L. B. there being the major part of the said commissioners in and by the said commission named and authorized, did meet at the said house of the said S. G. the hotel aforesaid, at, &c. aforesaid, pursuant to the adjournment last aforesaid, and the said W. R. then and there was brought and appeared before the said last named three commissioners, yet the said W. R. did not then and there or at any of the meetings or times aforesaid, or at any time whatsoever, surrender himself to the said commissioners named in the said commission or the major part of them, and submit to be examined (a) upon oath (he the said W. R. not being then or at any of the times aforesaid, of the people called Quakers,) by and before such commissioners or the major part of them by such commission authorized, but he the said W. R. did wilfully and feloniously make default and omit and refuse to surrender and submit to be examined as aforesaid, with an intent to defraud his creditors, against the form of the statute, &c. and against the peace, &c.

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And the jurors, &c. do further present, that the said W. R. Second count.
on the said, &c. was, and for a long time, to wit, for the space of four years and more before the day and year last aforesaid, had been and was a factor and a merchant dealer and chapman, and for all that time did use and exercise the trade of merchandize by way of bargaining, exchanging, bartering, and chevissance, and did seek his trade of living by buying and selling,

(a) *Quære* whether, if the indictment omitted to state a refusal to surrender, and submit to examination, it would be bad, 3 J. B. Moore, 656.

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to wit, at, &c. aforesaid, in the county of, &c. aforesaid. And that he the said W. R. so as last aforesaid, using and exercising the trade of merchandize and seeking his trade of living in manner last aforesaid, on the said, &c. at, &c. aforesaid, became and was indebted to the said certain persons, to wit, the said W. W. and G. C. jointly in the sum of one hundred pounds and upwards, and being so indebted and so using and exercising the trade of merchandize and seeking his trade of living in manner last aforesaid, he the said W. R. on the said, &c. at, &c. aforesaid, became a bankrupt within the intent and meaning of the several statutes made and then and yet in force concerning bankrupts, or some or one of them, and that afterwards, to wit, on, &c. on the petition of the said W. W. and G. C. so then being such creditors of the said W. R. as last aforesaid, a commission of bankrupt bearing date the said, &c. was in due manner awarded and issued out against the said W. R. directed to the said J. H. and G. W. esquires, J. A., J. S. and L. B. gentlemen, to wit, &c. aforesaid, whereupon the said W. R. afterwards, to wit, on the said, &c. at, &c. aforesaid, was, by the said J. H., J. S. and L. B. the major part of the said commissioners in the said last-mentioned commission named and authorized, in due manner found and declared a bankrupt, and that afterwards, to wit, on, &c. at, &c. aforesaid, notice thereof in writing was delivered to the said W. R. personally, to wit, at, &c. aforesaid (he the said W. R. then being in prison;) and that afterwards, to wit, on the said, &c. notice was also given in the London Gazette that such last-mentioned commission had been issued, and of the time and place of meeting of the said commissioners therein named, or the major part of them, to wit, on the said first, second, and twenty-sixth days of June then next, at eleven o'clock in the forenoon, on each of the said last-mentioned days, at the hotel in, &c. aforesaid. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. until which day the final examination of him the said W. R. was duly adjourned and postponed, J. H. and L. B. then being the major part of the said commissioners in and by the said last-mentioned commission named and authorized, did meet at the said house of S. G. the hotel aforesaid, at, &c. aforesaid, pursuant to the adjournment last aforesaid, and the said W. R. then and there was brought and appeared before the said last-mentioned three commissioners, yet the said W. R. did not then and there, or at any of the times or meetings before there appointed and held,

in pursuance of the said last-mentioned notice or commission, to wit, on the said first, second, and twenty-sixth days of June, or on either of them, or at any time, or other time whatsoever, surrender himself to the said commissioners named in the said last-mentioned commission or the major part of them, and submit to be examined upon oath (he the said W. R. not being then or at any of the times last aforesaid, of the people called Quakers) by or before such commissioners or the major part of them by such last-mentioned commission authorized, but he the said W. R. did wilfully and feloniously make default and omit to surrender and submit to be examined as last aforesaid, with an intent to defraud his creditors, against the form of the statute, &c. and against the peace, &c.

INDICTMENTS, &c. FOR OFFENCES RAISING PRICE [527] OF PROVISIONS BY FALSE RUMOURS, &c.

[Commencement of information, as ante, 7.] That A. B. late of, &c. on, &c. at, &c. wickedly intending to enhance the price of hops, did spread divers rumours and reports with respect to hops, by then and there openly and wickedly, in the presence and hearing of divers hop planters and dealers in

For various offences tending to raise the price of hops (a). First count, for spreading false rumours, in order to enhance the price of hops, stating the rumours.

(a) This was one of the indictments against Waddington, on which he was convicted, 1 East Rep. 143. Hand. Prac. 153. See other *modern precedents*, 1 East, 167. Hand. Prac. 166. Cro. C. C. 205. 6 Went. 7. Burn, J. Forestalling, &c. Williams, J. Forestalling, &c. Stark. 2d edit. 679 to 681, post, 1164. for conspiracy to raise price of salt. *Old precedents*, West, 133, 4, 329; Wi. Ent. 20; 1 Bro. 229, 230. 238. Leg. Flu. 17. 89; Her. 307, 8. 495. As to these offences, see, in general, Com. Dig. Justices of Peace, B. 38. Bac. Abr. Forestalling. 4 Bla. Com. 160. Burn, J. Forestalling, &c.

Williams, J. Forestalling, &c. Dick. J. Forestalling, &c. It appears to have been considered that all endeavours to enhance the common price of any merchandize, and all practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, are criminal at common law, and came under the general notion of forestalling, which included all offences of this nature, see references above, and Hawk. b. 1. c. 18. s. 1. 3 Inst. 196. Jac. Dict. Forestalling. 1 East, 165. But

hops, and others, then being at, &c. aforesaid, declaring and publishing that the then present stock of hops was nearly exhausted, and that from that time there soon would be a scarcity of hops, and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted; with intent and design by

see the indictment and notes in the case of the King and Rushby, post, 536, & 2 Smith's Wealth of Na. 290, 309, &c. 9th edit. and index to ditto, title "Labour," as to division of labour. *Quare*, whether in all these cases it ought not now to be averred and proved that the defendant *intended* to injure the public. *Forestalling* is buying, or contracting for any species of provisions or merchandize in the way to market, or dissuading persons from bringing their goods or provisions there, or persuading them to enhance the price when there: any of which practices make the market dearer to the fair trader. This has been generally considered to be an offence punishable as a misdemeanor at common law. 4 Bla. Com. 160. Bac. Abr. Forestalling. Hawk. b. 1. c. 18. Jac. Dict. Forestalling. It was also punished by several ancient statutes, the most important of which was the 5 & 6 Edw. 6. c. 14. but that provision and all others enforcing it were repealed by 12 Geo. 3. c. 71, though it is still considered as an offence at common law, as before those laws were enacted, and to subject the offender to be indicted. *Regrating* is the buying of corn or other dead victual in any market, and selling it again in the same market, or within four miles of the place, because, as is supposed, this practice must en-

hance the price of the article, as each successive purchaser must have an additional profit, 4 Bla. Com. 160. *Engrossing* is the buying up of a large quantity of any kind of food with a view to sell them again, by which means an individual of sufficient wealth might engross the whole of any necessary of life within a certain district, and then fix the price at which he would dispose of it at his pleasure. Id. *ibid*. The modern law on this subject was much considered in the case of the King v. Waddington, 1 East, 143. In that case it was decided that spreading rumours with intent to raise the price of a particular species of aliment, endeavouring to enhance its price by persuading others to abstain from bringing it to market, and engrossing large quantities in order to resell them at the exorbitant prices occasioned by his own artifices, are offences indictable at common law, and subject the party so acting to fine and imprisonment at the discretion of the court in which he is convicted. It was also held, that hops, though not used immediately for food, fall within this rule. But, at the present day, it would probably be holden that no offence is committed unless there is an intent to raise the price of provisions by the conduct of the party. For the mere transfer of a purchase in the market where it is made, the buying

such rumours and reports to induce divers persons then present whose names are to the said coroner and attorney hitherto un-

articles before they arrive at a public market, or the purchasing of a large quantity of a particular article, can scarcely be regarded as in themselves necessarily injurious to the community, and as such, indictable offences; a party buying and selling again, does not necessarily increase the price of the commodity to the consumer, for the division of labour or occupations will in general occasion the commodity to be sold cheaper to the consumer, see Smith's Wealth of Na. vol. ii. 309, and index, title "Labour;" and many cases may occur in which a most laudable motive may exist for buying up large quantities of the same commodity. See the arguments, &c. in 14 East, 406. 15 East, 511. Indeed, in the case of the King v. Rushby, on the indictment inserted below, the court were equally divided on the question, whether regrating is an indictable offence at common law, and though the defendant was convicted, no judgment was ever passed upon him. MSS. It seems, therefore, at all times to be safer to charge in the indictment, that the acts complained of were done with an evil design to raise the price of the article in question, for we have seen, that whenever a bad intent is essential to the completion of an offence, it must be averred in the indictment and proved on the trial, 6 East, 473. 2 East P. C. 1021. Andr. 162. Ante, vol. i. 245. "Raising and spreading a story that wool would not be suffered to be exported in such a year, probably by some stock-job-

bers in those times, whereby the value of wool was beaten down, though it did not appear the defendants reaped any particular advantage by the deceit, was, on account of its being an injury to trade, punished by indictment; and a confederacy without a further act done to impoverish the farmers of excise, and lessen the duty, has been held an offence punishable by information." Opinion of Mr. West, 2 Chalmers, 247, &c. By the 28 Geo. 3. c. 53. s. 2. it is enacted, that any number of persons united in covenants or partnerships, or in any way whatsoever, consisting of more than five persons, for purchasing coals for sale, or making regulations with respect to the manner of carrying on the said trade in coals, shall be deemed an unlawful combination to advance the price of coals, and every person concerned therein shall be liable to an indictment or information; and see as to bricks, a £20 penalty, 17 Geo. 3. c. 42. s. 4; and conspiracies among victuallers, &c. to raise the price of provisions, or the rates of wages, are punishable by the 2 & 3 Edw. 6. c. 15. In a late case it was held to be an indictable offence, to conspire on a particular day by false rumours to raise the price of public government funds, with intent to injure the subjects who should purchase on that day; and that the indictment was well enough, without specifying the particular persons who purchased, as the persons intended to be injured; and that the public govern-

known, being dealers in hops, and accustomed to sell hops, and having large quantities of hops for sale, not to carry or send to any market or fair any hops for sale, and to abstain from selling such hops for a long time, and thereby greatly to enhance the price of hops; in contempt, &c. to the evil example, &c. and against the peace, &c.

Second count,
for raising ru-
mours generally
without stating
them.

That the said A. B. on, &c. aforesaid, at, &c. aforesaid, wickedly intending and contriving to enhance the price of hops, did openly publish and spread divers rumours and reports, with respect to hops, to the effect following; that is to say, that the then present stock of hops was nearly exhausted, and that there would soon be a scarcity of hops, and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted; with intent and design, by such rumours and reports as aforesaid, to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c.

Third count, per-
suading dealers
not to bring hops
to market, but to
reserve them.

That the said A. B. on, &c. aforesaid, at, &c. aforesaid, unlawfully endeavoured to promote and enhance the price of hops, by persuading and attempting to persuade divers persons dealing in hops, and accustomed to sell hops, and having large quantities of hops for sale, not to go to any market or fair with any hops for sale, and to abstain from selling such hops for a long time, in contempt, &c. to the evil example, &c. and against the peace, &c.

Fourth count, en-
grossing by buy-
ing from persons
by name to sell at
exorbitant profit.

That the said A. B. on, &c. aforesaid, at, &c. aforesaid, did unlawfully engross and get into his hands, by buying a certain

ment funds of this kingdom might mean either British or Irish funds, which, since the Union, were each a part of the funds of the United Kingdom, 3 M. & S. 67. The indictment must also state the quantity of goods alleged to be forestalled, regrated, or engrossed, and if it merely state "a great quantity" the proceedings will be bad on demurrer, 1 East, 583. 1 Lord Raym. 475. Hawk. b. 1.

c. 18. s. 25. After conviction, and before judgment, if any interval intervene, the defendant will be committed, unless the prosecutor consent to his being admitted to bail, 1 East, 159. The sentence passed on a defendant convicted twice, was a fine of £500 for each conviction, and imprisonment for a month on one, and three months on the other, 1 East, 166, 172.

large quantity of hops, viz. 100 pockets of hops, of one W. G. [and so stating many other persons, naming them] at certain large prices, viz. £15 for each and every hundred weight of all the hops contained in the said pockets, with intent to re-sell the said hops so by him bought for an unreasonable profit, and thereby to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c.

That the said A. B. on, &c. aforesaid, at, &c. aforesaid, did get into his hands a certain other large quantity, to wit, 3700 other pockets of hops, by contracting with one W. G. [and many other persons, naming them] to buy and take of them the said 3700 pockets of hops, and by persuading and procuring the said W. G. &c. to sell and deliver to him the said A. B. the said quantity of hops at certain large prices, to wit, at the price of £13 for each and every hundred weight of hops, which should be delivered to him, on, &c. and at the price of £14 for each and every hundred weight delivered to him on the nineteenth of said May, and, &c. and [stating other days] with intent and design to re-sell the said hops, so bought and contracted for as aforesaid for an unreasonable profit, and thereby greatly to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c.

Fifth count, same stating the contracts.

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[There were three other counts nearly to the same purport, but expressed in more general terms,—the seventh charging the buying large quantities of hops of divers persons, with intent to raise the prices,—the eighth count same as the last ones, laying the intent to be to re-sell the hops at an exorbitant profit, and thereby to enhance the price,—and the ninth generally alleging that the defendant engrossed and got into his hands, by buying of divers persons unknown, large quantities, to wit, 500 tons of hops, with a similar intention to re-sell them.]

Other counts.

[Commencement as ante, 7.] That A. B. late of, &c. on, &c. at, &c. did engross and get into his hands, by buying on divers days and times between the twentieth day of September, in the year of our Lord 1798, and the first of January, in the year of

For various offences tending to raise the price of hops (a).

(a) This was the other indictment against Waddington, and on which he was convicted, 1 East Rep. 167. Hand. Prac. 166. See notes to last precedent.

our Lord 1800, divers large quantities of hops, to wit, of one T. W. a certain large quantity of hops, to wit, 500 weight of hops, [and so of twenty-five other persons by name other quantities] with intent and design to resell the said hops so by him engrossed and bought as aforesaid for an unreasonable profit, and thereby greatly to enhance the price of hops, to the evil example, &c. and against the peace, &c.

Second count,
purchasing hops
by a forehand
bargain.

That the said A. B. on, &c. at, &c. aforesaid, did engross and get into his hands, a large quantity, (to wit) fifty acres of hops, before that time planted, and then growing on certain lands of one J. A. by a certain forehand bargain, that is to say, by contracting with the said J. A. to buy and take of him the said J. A., and by persuading and procuring the said J. A. to contract, to sell, and to deliver to him the said A. B. at a certain large price, to wit, at the price of £10 for each and every hundred weight of all the hops that should be grown by the said J. A. upon certain lands, situate in the parish of St. P. in the said county, in possession of the said J. A. then planted with hops by the said J. A. with intent and design to resell the hops thereof coming, and every part and parcel thereof engrossed and bought as aforesaid for an unreasonable profit, and thereby greatly to enhance the price of hops, to the evil example, &c. and against the peace, &c.

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Third count, buying large quantities of hops of divers persons named, to prevent them from being brought to market, and re-sell them at an unreasonable profit, and thereby to enhance the price.

That the said A. B. on, &c. aforesaid, and on divers other days, &c. at, &c. aforesaid, did buy and cause to be bought, and did get into his hands, a certain large quantity of hops, by buying of T. W. [and twenty-seven others named therein,] certain quantities of hops, to wit, &c. [stating the quantities,] with intent to prevent the same from being brought to market for sale, and to re-sell the same for an unreasonable profit, and thereby greatly to enhance the price of hops, in contempt, &c. and against the peace, &c.

Fourth count,
buying all the
growth of hops
in several pa-
rishes with a like
intent.

That the said A. B. on, &c. at, &c. aforesaid, did buy and cause to be bought, all the growth of hops on divers acres of land, situate, lying, and being in the several parishes of, &c. [naming them] by certain forehand bargains, viz. by bargaining with one T. S. &c. [naming thirty-eight others,] to buy all the hops then growing, or that should be growing in the then next season, on certain lands in the said several and respective parishes of, &c. [naming them] at a certain large price, to wit,

at the rate of £10 for each and every hundred weight of hops, that should or might be the produce of such lands, with intent to prevent the same from being brought to market for sale, and to re-sell the same at an exorbitant price and unreasonable profit, and thereby greatly to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c.

That the said A. B. on, &c. aforesaid, at, &c. aforesaid, did buy, and cause to be bought, and did get into his hands, by buying of one T. W. &c. [*naming twenty-seven other persons,*] a certain large quantity of hops, to wit, &c. with intent and design to re-sell the said hops, so by him bought as aforesaid, for an unreasonable profit, and thereby greatly to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c.

Fifth count, buying hops of divers persons named, with the same intent.

That on, &c. at, &c. aforesaid, the said A. B. did buy all the growth of hops upon divers acres of land, situate, &c. in the several parishes of, &c. [*naming them*] by certain fore-hand bargains, viz. by bargaining with one T. S. &c. [*naming thirty-seven others,*] respectively to buy and take of them the said, &c. respectively, at a certain large price, to wit, at the price of £10 per hundred weight for each and every hundred weight of the hops then grown, or that should be grown in the next season, upon the said lands, situate, &c. with intent and design to re-sell the hops thereof coming, for an unreasonable price, and thereby greatly to enhance the price of hops, to the damage and detriment of the public at large, in contempt, &c. to the evil example, &c. and against the peace, &c.

Sixth count, buying by forehand bargains.

That the said A. B. on, &c. at, &c. aforesaid, did unlawfully endeavour to promote and enhance the price of hops, by persuading, and attempting to persuade, divers persons, to wit, [*naming them*] dealing in hops, and accustomed to sell hops, and having large quantities for sale, not to go to any market or fair with any hops for sale, and to abstain from selling such hops for a long time, in contempt, &c. to the evil example, &c. and against the peace, &c.

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Seventh count, persuading persons not to carry hops to market.

That the said A. B. between, &c. at, &c. aforesaid, did unlawfully engross and get into his hands, by buying of divers persons, whose names to the said coroner and attorney remain

Eighth count, engrossing by buying of persons unknown.

unknown, divers quantities, amounting to a large quantity, to wit, 2000 tons of hops, with intent to re-sell the same at an exorbitant profit, and thereby greatly to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c.

Ninth count, for buying of persons unknown. That, &c. [*same as the last, only omitting the charge of engrossing, and confining it to buying.*]

Tenth count. That the said A. B. on, &c. aforesaid, and on divers other days and times, &c. at, &c. aforesaid, did buy of divers persons, whose names to the said coroner and attorney are as yet unknown, the growth of divers, to wit, 2000 acres of hops, then growing upon divers, to wit, 2000 acres of land, situate in the several parishes of, &c. [*naming them*] at a large price, viz. at the rate of ten pounds per hundred for every hundred weight of hops that should be grown upon the said land, with intent to re-sell the hops thereof coming, for an exorbitant price and lucre, and thereby greatly to enhance the price of hops, in contempt, &c. to the evil example, &c. and against the peace, &c. [*Common conclusion of information, as ante, 7.*]

BY FORESTALLING.

For forestalling lambs in their way to a public market (a).

[533]

That A. B. late of, &c. on, &c. at, &c. did buy and cause to be bought, of and from one C. D. divers, to wit, thirty lambs, then and there coming and being driven towards a certain market in the county of E. for the sale of oxen, heifers, cows, sheep, and lambs, (among other things) called Rumford market, for the purpose of being exposed to sale, and sold in the said market, and before the same were brought into the said market, where the same should have been sold, in contempt, &c. to the evil example, &c. to the great prejudice of all the liege subjects of our said lord the king, resorting to and living near

(a) This was the indictment against S. Matthew, A. D. 1801, from the Crown Office. See other precedents, ante, 530, 1. Cro. C. C. 8th edit.

205. 7th edit. 373. Burn, J. Forestalling, and see notes, ante, 527, and post, 536, n. (a). and Starkie, 2d edit. 679, 680. 768.

to the said market, and against the peace, &c. And the jurors, &c. do further present, that the said A. B. on the said, &c. at, &c. aforesaid, did forestall a certain market to be holden and held in Rumford, in the said county of E. &c. on, &c. for the sale of oxen, heifers, cows, sheep, and lambs, (among other things) by then and there, to wit, on the said, &c. aforesaid, at, &c. aforesaid, buying, and causing to be bought, of and from a certain person to the jurors aforesaid unknown, divers, to wit, thirty lambs, as and whilst the same were in the way to the said market, and then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, coming and being driven towards the said market; the said A. B. at the time of buying the said thirty lambs, then and there well knowing that the said thirty lambs were then and there in the way to the said market, and going and being driven thither for the purpose of being exposed to sale, and sold in the said market, on the said, &c. in contempt, &c. [Conclusion as in first count.]

Second count.

That C. D. late of, &c. on, &c. at, &c. did buy, and cause to be bought, of and from one R. G. two cows and two calves, and did then and there buy, and cause to be bought, of and from one E. D. two other cows and two other calves, and did also then and there buy, and cause to be bought, of and from a certain person called Mr. S. three other cows and three other calves, and did also then and there buy, and cause to be bought, of and from a certain other person called young Godfrey, one other cow and one other calf, which said cows and calves respectively were then and there coming, and being driven towards a certain market in the city of London, for the sale of oxen, heifers, cows, and calves, among other things, called Smithfield market, for the purpose of being exposed to sale and sold in the said market, and before the same were brought unto the same market, in contempt of our said lord the king and his laws, to the evil example of all other persons, to the great prejudice of all the liege subjects of our said lord the king, resorting to and living near to the said market, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said

The like for forestalling of several persons in one count (a).

Second count.

(a) This was the indictment 1801, from Crown Office. See against R. Laycock, A. D. ante, 527, and post, 536. n. (a).

R. L. on the said 13th day of March, in the 40th year aforesaid, at the parish aforesaid, in the said county of M. did forestall a certain market to be holden and held in West Smithfield, in the city of London, on the 14th day of March, in the year aforesaid, for the sale of oxen, heifers, cows, and calves, among other things, by then and there, to wit, on the said 13th day of March, in the year aforesaid, at the parish aforesaid, in the county of M. aforesaid, buying, and causing to be bought, of certain persons to the jurors aforesaid unknown, eight cows and eight calves, as and whilst the said cows and calves were in the way to the said market, and then and there, to wit, on the said 13th day of March, in the year aforesaid, at the parish aforesaid, in the said county of M. coming and being driven towards the said market, for the purpose of being exposed to sale and sold in the said market, on the said 14th day of March, in the year aforesaid, and before the said cows and calves were brought unto the said market, he the said R. L. at the time of buying the said cows and calves, then and there well knowing that the said cows and calves were then and there in the way to the said market, and going and being driven thither for the purpose of being exposed to sale and sold in the said market, on the said 14th day of March, in the year aforesaid, in contempt of our said lord the king and his laws, to the evil example of all other persons, to the great prejudice of all the liege subjects of our said lord the king, resorting to or living near the said market, and against the peace of our said lord the king, his crown and dignity.

BY ENGROSSING.

For engrossing
(a).

Carmarthenshire, to wit. That A. B. late of, &c. on, &c. at, &c. aforesaid, did engross and get into his hands by buying of and from divers persons to the jurors unknown, a large quantity, to wit, four thousand quarters (b) of wheat, with

(a) This was the indictment against R. M. Phillips, A. D. 1800, obtained from the Crown Office. See other precedents, ante, 529. 532. Cro. C. C. 7th edit. 374. 8th edit. 205. Burn,

J. Forestalling. 2 Stark. 2d ed. 681. 737. And as to the law, see ante, 527, note (a).

(b) The quantity must be stated, 1 East, 583.

intent to sell the same again for lucre, gain, and profit (a), to the evil example, &c. and against the peace, &c. [there were three other counts for engrossing other articles similar in point of form.]

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That A. B. late of, &c. on, &c. at, &c. did unlawfully engross and get into his hands, by buying of and from one A. S. fifty quarters of wheat, to the intent to sell the same again at an unreasonable profit, to the evil example, &c. and against the peace of, &c.

The like in another form (b).

BY REGRATING.

That A. B. late of, &c. on, &c. at, &c. in a certain market there called Saint Alban's market, unlawfully did buy, obtain, and get into his hands and possession, of and from one C. D., a large quantity of wheat of the growth and produce of this kingdom of Great Britain, to wit, seven loads of wheat of the growth and produce of this kingdom of Great Britain, at and for the price or sum of forty-four shillings, for each and every load of the said seven loads of the said wheat (part of the said wheat by way of sample of the said seven loads then being brought to the said market, by the said C. D. for the sale of the said seven loads in the same market ;) and afterwards, to wit, on the said, &c. he the said A. B. at, &c. aforesaid, in the same market there called St. Alban's market, unlawfully did regrade the said seven loads of wheat, and sell the said seven loads of the said wheat again to one E. F., at and for the price or sum of two pounds twelve shillings and sixpence, for each and every load of the said wheat, with a deduction of five shillings on the whole price of the said seven loads of wheat

For regrating wheat (c).

(a) Other precedents conclude more properly "to the intent to sell the same again at an unreasonable profit, &c." 2 Stark. 654. Ante, 529. 532.

(b) See last precedent and notes.

(c) This was the indictment against W. Joceline, A. D. 1802, obtained from the Crown

Office, see precedents and notes referred to in precedent ante, 527, note (a). See other precedents, Cro. C. C. 7th ed. 373. 8th ed. 205. Burn, J. Forestalling, 2 Stark. 2d ed. 679, 680. And as to the law, see ante, 527, note (a). and post, 536, 537.

Second count.

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being allowed or thrown back by the said A. B. to the said E. F., in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, in a certain market there called St. Alban's market, unlawfully did buy, obtain, and get into his hands and possession, of and from the said C. D. a large quantity of wheat, of the growth and produce of this kingdom of Great Britain, to wit, seven loads of wheat of the growth and produce of this kingdom of Great Britain, at and for the price or sum of forty-four shillings, for each and every load of the said seven loads of the said wheat, the said seven loads of the said wheat then being brought to the said market by the said C. D. for the sale of the said seven loads of wheat in the same market; and afterwards, to wit, on the said twenty-ninth day of November, in the year aforesaid, he the said A. B. at the parish aforesaid, within the borough aforesaid, in the county aforesaid, in the same market there called St. Alban's market, unlawfully did regrade the said seven loads of wheat and sell the said seven loads of the said wheat again to the said E. F., at and for the price or sum of two pounds twelve shillings and sixpence for each and every load of the said seven loads of the said wheat, five shillings being allowed or thrown back by the said A. B. to the said E. F. from the whole amount of the price of the said seven loads of wheat, in contempt, &c. [*conclusion as in first count.*] And the jurors, &c. do further present, that, &c. [*like the first count, only omitting the words "get into his hands and possession" and charging a buying only.*] And the jurors, &c. do further present, that, &c. [*like the second count, only omitting the words "get into his hands and possession," and charging the buying only.*] There were two other counts varying only from the three last in the mode of stating the quantity and price of the wheat,—viz. the fifth "a large quantity," to wit, seven loads of wheat of the growth and produce of Great Britain, (the said wheat being brought, &c.) at the price, &c. and the sixth, "a large quantity," to wit, at the price, &c. (the said wheat being, &c.)

Third count.

Fourth count.

The like for regating(a).

[*Commencement as ante, 1 and 2.*] That J. R. late of, &c. on, &c. at London aforesaid, that is to say, at the parish of

(a) This was the indictment 40 Geo. 3. The defendant against Rushby, Hilary Term, was convicted, and after an

Allhallows Barking, in the ward of Tower in London aforesaid, in a certain market there, called the Corn Exchange, unlawfully did buy, obtain, and get into his hands and possession, of and from J. ., J. G., and J. H., a large quantity of oats, of the growth and produce of this kingdom of Great Britain, to wit, ninety quarters of oats, of the growth and produce of this kingdom of Great Britain, at and for the price or

ineffectual application for a new trial, Mr. Law (the late Lord Ellenborough,) Mr. Serjeant Best, (the now chief justice of the Common Pleas,) and Mr. Marryatt, moved, in arrest of judgment, on the grounds that the act of regrating, as described in 6 Edw. 6. (now repealed) and mentioned as a crime by that act, is not an offence which now exists, as such at common law, and that though the word *regrator* occurs in the statute of Edw. the Sixth and other statutes, yet there is no statute to be found which describes a regrator, per se, as buying and selling again in the same market as a criminal, nor can any indictment so framed be found, or that selling again in the same market on the same day was ever recognized as a crime. That by the stat. of 51 Hen. 3. st. 6. s. 3. it is nothing more or less than an huckster, and that the reselling in the same market is no where recognized as an ingredient of regrating, or is recognized as an offence, but as a huckster mentioned indiscriminately, not as a principal, *eo nomine*, that is a statute against forestalling by selling it again to regrators: they are not describing the offence of regrating as consisting of any thing in the reselling of the article, but is understood, merely as an huckster, that statute being repealed which mentioned the crime, and which gave it existence—that

statute existing no longer which was a declaration of what was the common law on the subject, in consequence of the repeal of that statute, it not only does away the offence itself, but repealed the explanation: the statute is therefore to be considered as if it had no existence; and if it be so, we are to look to the antiquity of the cases to know whether regrating is so described by the act of parliament as an offence in 6 Edw. 3. c. 6, in which the word “regrator” (which was long after the time of legal memory) is not described as an offence—it is used as to other subjects than victuals. That the statute of 14 Rich. 2. c. 4, forbids the buying of wood, &c. it is most clear it does not forbid or restrain, &c. which is the denomination given to it by this particular statute. The 8 H. 6. c. 5, says, &c. Here regrator is nothing more than a common huckster, and not a regrator. It does not mean the re-sale in the same market, nor can any trace of it be found in the statutes. See also Illingsworth, 102, 103, 137, 145, 148, 156, 177. Godbolt, 131. 2 Brownl. 108. Cro. Car. 231. Upon this suggestion, the court granted a rule to show cause why judgment should not be arrested, and after argument, the court were divided in opinion, and no judgment was passed upon the defendant.

sum of forty-one shillings, for each and every of the said ninety quarters of oats, part of the said oats, by way of sample of the said ninety quarters of oats, then being brought to the said market by the said J. S., J. G., and J. H., for the sale of the said ninety quarters of oats in the same market; and afterwards, to wit, on the same, &c. he the said J. H. at L. aforesaid, that is to say, at the parish and ward aforesaid, in L. aforesaid, in the same market there called the Corn Exchange, unlawfully did regrate a large quantity, to wit, thirty quarters of the said oats, and sell the said thirty quarters of the said oats again to one W. H., at and for the price or sum of forty-three shillings for each and every of the said thirty quarters of the said oats, in contempt, &c. to the evil example, &c. and against the peace, &c.

Other counts.

Second count same as the first, except in charging only, that the defendant "did buy" the oats, omitting the words "obtain and get into his hands and possession." Third count same as the first, only for *thirty* instead of *ninety* quarters. Fourth count varying from the third as the second does from the first, by merely saying "did buy," and stating the quantity at thirty quarters. Fifth count like the first, stating that ninety quarters were obtained, and but thirty regrated. Sixth count like the fifth, only omitting the allegation respecting the sample, and saying only "did buy." Seventh count like the sixth, except saying "did buy, obtain, and get into his hands and possession," and stating thirty in both places as obtained and regrated.

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INDICTMENTS FOR FORCIBLE OBSTRUCTIONS OF TRADE.

Upon 36 Geo. 3. c. 9, for an assault with intent to prevent a man from buying corn (a).

That A.B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon one E. F. did wilfully and maliciously

(a) See 2 Stark. 430. The statute 36 Geo. 3. c. 9. s. 1, enacts, that if any person shall wilfully, and maliciously beat, wound, or use any other violence to, or upon any person with intent to deter or hinder him from buying corn or grain, in any market or other place within this kingdom, or com-

make an assault, and him the said E. F. did then and there wilfully and maliciously beat, with intent to deter and hinder him the said E. F. from then and there buying corn at the parish aforesaid, in the county aforesaid, to the great damage of the said E. F. in contempt, &c. to the evil example, &c. contrary to the form, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon one E. F. who was then and there driving a certain cart loaded with wheat, unlawfully and maliciously did make an assault, and him the said E. F. did then and there unlawfully and maliciously beat, with intent to stop such wheat, to the great damage of the said E. F. against the form of the statute, &c. in contempt, &c. to the evil example, &c. and against the peace, &c.

For an assault, &c. with intent to stop grain, on 36 Geo. 3. c. 9. (a).

INDICTMENT FOR SELLING CLOTH FALSELY MARKED.

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That A. B. late of, &c. and, &c. [*other defendants*] being persons of bad name, fame, and conversation, on, &c. with force and arms, at, &c. contriving and falsely, fraudulently, and deceitfully intending to deceive and defraud our said lord the king of the profit of the subsidy of cloth, unlawfully, unjustly, falsely, fraudulently, and deceitfully counterfeited and forged, and caused and procured to be counterfeited and forged, a certain seal, to the likeness and similitude of the seal of the alneager, and collector of the said subsidy, and then and there with force and arms, falsely, &c. and without any legal warrant

For selling cloth with the alneager's seal counterfeited thereon (b).

mit any of the other offences specified, every such person being thereof lawfully convicted before any two or more justices of the peace for the county or district wherein the offence is committed, or before the justices of the peace in open sessions, (who are thereby authorized and empowered summarily, and finally, to hear and determine the same) shall

be sent to the common gaol or house of correction, there to continue and be kept to hard labour for any time not exceeding three months, nor less than a month, s. 1. A repetition of the offence is made a single felony, punishable with transportation for seven years.

(a) See form, 2 Stark. 430.

(b) See Trem. P. C. 103. Stark. 466.

or authority, thirty pieces of woollen cloth called serge, of the goods and chattels of some person unknown, with the said false and counterfeited seal did, and each of them did, seal and cause to be sealed, and that the said A. K., &c. the aforesaid thirty pieces of woollen cloth called serge, so as aforesaid sealed with the said false and forged seal, then and there with force and arms, &c. unlawfully, &c. delivered the same to divers persons unknown, as and for thirty pieces of woollen cloth, lawfully sealed by the collector of the said subsidy of our said lord the king, to the intent that the same pieces of woollen cloth should be exposed to sale, and sold without any further sealing, in deceit of our said lord the king, and divers of his subjects, and against the peace, &c.

INDICTMENTS—OFFENCES AGAINST TRADE— SETTING UP TRADE WITHOUT APPRENTICESHIP.

For exercising a trade, under stat. 5 Eliz. c. 4, not having served seven years as an apprentice (a).

[*Commencement and conclusion of indictment, as ante, 1 & 2, or of information at sessions, ante, 11 & 12.*] That W. G. late of, &c. on, &c. at, &c. did set up, occupy, use, and exercise, and from thence continually afterwards, for a long space of time, to wit, the space of six whole months and upwards,

(a) See other precedents, 1 Saund. 309. West, 251. 231. 1 Bro. 232. 5. Cro. C. C. 8th edit. 463. 7th ed. 723. Trem. P. C. 264. 6 Wentw. 395. 3 Campb. 344. Stark. 742. The offence is founded on the 5 Eliz. c. 4. which enacts, that it shall not be lawful to any person other than such as then did lawfully use, or exercise any art, mystery, or manual occupation, to set up, occupy, use, or exercise any craft, mystery, or occupation then used or occupied within the realm of England or Wales, except he should have been brought up therein seven years, at the least, as an apprentice

in manner and form therein mentioned; nor to set any person to work in such mystery, art, or occupation, being not a workman at the time of passing the statute, except he had been such an apprentice, or having been such apprentice, would become a journeyman and be hired by the year, upon pain that every person so offending forfeit forty shillings for every month; one half of which shall go to the king, and the other to the informer. The trades to which this provision applies are too numerous to be enumerated here, but they will be found stated in Chitty on Apprentices, 117 to 121;

to wit, until, &c. at, &c. aforesaid, for his own lucre and gain did unlawfully set up, occupy, use, and exercise the art, mys-

and see also as to what is using a trade within the statute, id. 121 to 127. It seems still to be a doubtful point, whether a person embarking his property in a commercial speculation, and carrying it on by means of agents who have served a regular apprenticeship, will be liable to the penalties of the act, 15 East, 161. If a master employs a servant in his business who has never before engaged in it, under a parol agreement to teach him the trade, and pay him wages in consideration of a premium, he will be liable to the specific penalties, 2 Campb. 1. But a person may lawfully employ in individual branches of his trade, journeymen who have served a regular apprenticeship to the particular departments in question, though he himself has not undergone the service requisite under the statute to the legal exercise of one of them alone, 2 Campb. 127. As to what kind of service is sufficient under the statute, see Chitty on Apprentices, 127 to 131. In order to constitute the offence, the business must have been carried on for a month at least, otherwise no proceeding can be supported, 3 Campb. 346. It seems to be at the election of the prosecutor whether he will indict or sue for the penalties; but the former is the only course to be taken, if a year has expired since the illegal exercise of the trade, 2 Ld. Raym. 1038, 9. As to the *courts in which to prosecute and modes of prosecution*, whether by indictment, information, or action, see 1 Saund. 312, n. 1. Chitty's

Apprentice Law, 135 to 138. 1 Sess. Ca. 256. 2 Sess. Ca. 222. The *indictment* must contain all the requisites of a declaration at the suit of a common informer, see rules, Chitty Ap. Law, 136, 7, 8. It must bring the case in every particular within the statute; state the nature of the trade which the defendant carries on, 1 Saund. 309, n. 3, aver that it was a trade in use in England or Wales at the time the statute was enacted, 2 Salk. 611, unless it be one of the trades which it actually mentions, when the court will judicially notice it, 1 Saund. 309, n. 3. Chitty Ap. Law, 136, 7. It is also absolutely necessary to state, that the defendant never had been brought up for the space of seven years as an apprentice to the trade in question, for these are the most material words in the statute, and without them any proceedings under it will be defective, 2 Ld. Raym. 1179. But there is no occasion to negative the exceptions which subsequent statutes may have introduced, which are matters of defence, if the case can be brought within them. 2 Burr. 1035. Chitty Ap. Law, 137. The offence must be laid to have taken place "within the realm of *England*," and if the term "*Great Britain*" be substituted, the indictment will be invalid, 1 Stra. 552. It must also be shewn, that the party exercised the trade for a month and upwards, and it should be laid to have been on a certain day and for so many months afterwards, though the prosecutor will not be

tery, and (a) manual occupation of a brewer, the same being an art, mystery, and manual occupation used within England, on the twelfth day of January, in the fifth year of the reign of Elizabeth, formerly queen of England, aforesaid, in which same art, mystery, and manual occupation of a brewer, he the said W. G. was not brought up for the space of seven years at the least, as an apprentice, in manner and form as in and by the statute in such case made and provided is mentioned, contrary to the form of the said statute, and against the peace of our said lord the king, his crown and dignity.

Indictment for setting a person to work at a trade, not having served seven years' apprenticeship, under 5 Eliz. c. 4.

Middlesex. The jurors for our lord the king upon their oath present, that T. S. late of, &c. being a person using, exercising, and carrying on the craft, mystery, and manual occupation of a carpenter, on, &c. at, &c. aforesaid, for his own lucre and gain, unlawfully and willingly did set one W. G. on work in the said craft, mystery, and occupation, and did continue the said W. G. so set on work as aforesaid, in the said craft, mystery, and occupation, from the said, &c. until the, &c. that is to say, for the space of whole months and upwards, at, &c. aforesaid, the said craft, mystery, and occupation of a carpenter, being a craft, mystery, and occupation used within England, on the twelfth day of January, in the fifth year of the reign of the lady Elizabeth late queen of Eng-

compelled to prove the precise time set forth on the record. Peake's Rep. 57. Chit. Ap. L. 137. Formerly it was usual to aver that the defendant did not exercise the trade at the time of making the act, and soon after it was passed, the omission of this averment would have been fatal, but now the necessity has ceased from the manifest absurdity of stating, that the party was not in the exercise of his present vocation in the reign of Elizabeth. 1 Burr. 367. Chitty App. L. 136, 7. On this statute, two or more persons cannot be jointly indicted. 1 Salk. 382. 2 Sess. Cas. 221. Chitty App. L. 137. The indictment, at the present day, concludes

merely contrary to the form of the statute in such case made and provided, without the particular description of the enactment, which it was formerly usual to insert, 1 Saund. 309, n. 7. And it seems the words "against the peace, &c." must be added, though it was observed by Holt, C. J. that "it would be very hard to make a barber's shaving a man by his consent to be *contra pacem*," 3 Salk. 191. 2 Ld. Raym. 1034. *Evidence*. The prosecutor must in general prove the existence of the trade at the time mentioned in the statute, unless the trade be mentioned in the statute, 3 Campb. 121.

(a) Some of the precedents are in the disjunctive "or."

land, &c. he the said W. G. not having served in the said craft, mystery, and occupation for the space of seven years as an apprentice, nor having served as an apprentice as aforesaid, had become a journeyman or been hired by the year, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity

[542]

INDICTMENTS—OFFENCES AGAINST TRADE, SEDUCING MANUFACTURERS TO LEAVE KINGDOM.

That A. B. late of, &c. on, &c. with force and arms, at, &c. unlawfully did contract with one C. D., he the said C. D. then and there being a manufacturer, workman, and artificer of

For enticing an artificer to leave the kingdom (a).

(a) This is no longer an offence; for, by 5 Geo. 4. c. 97. all the acts relative to artificers leaving the kingdom are repealed. It may however be useful to give the above form, which was against Harding, in 39 Geo. 3. and was obtained from the crown-office. See a precedent at common law for seducing frame-work knitter to emigrate to France, and teach the art there, Trem. P. C. 252. And see modern precedents, 6 T. R. 739. Stark. 624. See Burn, J. Manufacturers, Williams, J. Manufacturers, I.

The following decisions relative to the form of the indictment, &c. were applicable to old acts. The indictment could not be preferred at the general sessions of oyer and terminer, and general session of the peace for Middlesex. Hewitt's case, Russ. & Ry. Cr. Ca. 158. In analogy to the case of seducing soldiers from their allegiance, it seems not to be necessary to state the means or manner by which the defend-

ant endeavoured to prevail on the artizan, 1 B. & P. 180. 2 Leach, 790. It seems also not necessary to name the country to which the artificer was to emigrate, or the implements to be exported, 6 T. R. 740. And when the American colonies were part of his majesty's dominions, and the indictment charged the defendant with seducing a manufacturer to go to America, without any qualification or particular description, to shew that the place was not within our own territories, after verdict of guilty, the court held the proceedings valid, and thought the name "America" might be rejected as surplusage, 6 T. R. 739. Though the words of the repealed statutes are in the disjunctive "workman or artificer," the conjunctive allegation may be used, id. ibid. Evidence. The prosecutor is a competent witness, though entitled to a moiety of the penalty on conviction. 3 Esp. Rep. 68.

[544] Great Britain, of and in cotton, being a manufacture of Great Britain, to go out of this kingdom of Great Britain, into a certain foreign country not within the dominions of or belonging to the crown of Great Britain, to wit, to Hamburgh, in contempt, &c. against the form of the statute, &c. and against the peace, &c. [*Second count, same as first, only instead of "did contract with," say, "did entice and persuade."* *Third count, "did endeavour to persuade."* *Fourth count, "did solicit."* *Fifth count, "did seduce."*]

The like in another form (a).

That A. B. late of, &c. being a person of a wicked mind and disposition, and having no regard for the laws and statutes of this realm, nor fearing the pains and penalties therein contained, within twelve months next before the taking of this inquisition, that is to say, on, &c. with force and arms, at, &c. aforesaid, unlawfully did contract with one C. D. he the said C. D. then and there being a manufacturer, workman, and artificer of Great Britain, in the manufacture of weaving linen cloth, then and there being a manufacture of Great Britain, to go out of this kingdom of Great Britain into a certain foreign country called America, such foreign country not then being within the dominions of, or belonging to, the crown of Great Britain, in contempt, &c. against the form, &c. and against the peace, &c.

Second count. And the jurors aforesaid, do further present, that the said P. P. P. M. being a person of a wicked mind and disposition, and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, within twelve months next before the taking of this inquisition, that is to say, on the said second day of March, in the thirty-sixth year of the reign of our said lord the now king, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully did entice, persuade, and solicit the said J. M. he the said J. M. then and there being a manufacturer, workman, and artificer of Great Britain, in the manufacture of weaving linen cloth, then and there being a manufacture of Great Britain, to go out of, &c. [*Same to the end as the first count. Third count, "did endeavour to persuade."*] And the jurors, &c. do further present, that the said A. B. being a person of a wicked mind and disposition, and having no regard for the laws and statutes of this realm, nor fearing the pains and penalties

Fourth count.

(a) See last precedent and notes, and 2 Stark. 62.

therein contained, within twelve months next before the taking of this inquisition, that is to say, on the said 2d day of March, in the thirty-sixth year of the reign of our said lord the now king, with force and arms, at, &c. aforesaid, unlawfully did contract with one C. D. he the said C. D. then and there being a workman, in the manufacture of a linen weaver, then and there being a manufacture of Great Britain, to go out of this kingdom of Great Britain into a certain foreign country called America, such foreign country not then being within the dominions of, or belonging to, the crown of Great Britain, in contempt, &c. against the form, &c. and against the peace, &c.

That T. I. late of, &c. comb-maker, being a subject of our said lord the king, and an artificer and manufacturer of Great Britain, to wit, a comb-manufacturer, and not regarding the laws and statutes of this realm, on, &c. with force and arms, at, &c. aforesaid, was unlawfully preparing to go abroad beyond the seas, out of his majesty's dominions into a foreign country, to wit, America, out of his majesty's dominions, for the purpose of there using and exercising his said trade and manufacture, against the form, &c. and against the peace, &c. [*Second count states the like offence of preparing to go to America, for the purpose of there teaching his said trade and manufacture to foreigners.*]

[545]
On 5 Geo. 1.
c. 27, for prepar-
ing to go abroad,
and use the trade
of a comb-maker
(a).

INDICTMENTS FOR OFFENCES AGAINST TRADE, BY EXPORTING MACHINES.

That A. B. late of, &c. being an evil-disposed person, and having no regard for the laws and statutes of this realm, nor fearing the pains and penalties therein contained, after the twenty-fourth day of June, one thousand seven hundred and eighty-one,

On the 1st and
4th sections of
21 Geo. 3. c. 37,
for attempting to
transport ma-
chinery (b).

(a) The act is now repealed by 5 Geo. 4. c. 97. See a similar precedent in Stark. 679. See ante, 542, note (a).

(b) This was the indictment against W. Cockerill and another, A. D. 1800, obtained from the crown-office. The first two counts are framed on

the first section of the act, and all the subsequent counts on the fourth. See another precedent, Stark. 652. —

The offence is founded on the 21st Geo. 3. c. 37. (passed to amend the 14th Geo. 3. c. 71.) which enacts, that if any person shall load, or put on board,

to wit, on, &c. with force and arms, in Great Britain, to wit, at, &c. aforesaid, unlawfully did pack, and cause and procure to be packed, in a certain wooden box, in order to be loaded and put on board of some ship or vessel not bound directly to any port or place in Great Britain or Ireland, containing tools, utensils and implements, to wit, forty pair of cards, ten pair of doffing cards, sixty-three feet of filleting and twelve doffing combs, used in and proper for the *preparing* of the cotton manufactures of this kingdom, in contempt, &c. against the form, &c. and against the peace, &c. Second count same as the first, only describing the tools as "used in and proper for the *working* of the cotton manufactures," &c. And the jurors, &c. do further present, that the said A. B. being such

Third count, for having machinery in custody with intent to export illegally.

or pack, in order to put on board, or cause or procure to be loaden or put on board, or packed, in order to be loaden or put on board any vessel not bound directly to any port in Great Britain or Ireland, or shall bring, or cause to be brought to any quay, wharf, or other place, in order to be so put on board any such vessel, any machine, engine, tool, press, paper, utensil, or implement, or any model, or any part or plan thereof, used in or proper for the preparing, working, pressing, finishing, or completing of the *woollen, cotton, linen or silk* manufactures of this kingdom, he shall forfeit all the goods, be fined 200*l.* and imprisoned for 12 months, and till he has paid the sum forfeited, s. 1. If the captain or master of the vessel knowingly permit such goods to remain on board, or if a custom-house officer connive at the exportation, he shall forfeit 200*l.* and if his ship be in his majesty's service, rendered incapable of holding any office under the crown, s. 2, 3. And if any person has in custody, power, or possession, or shall apply for, or procure to be made, any such machine, or

shall collect, obtain, make, apply for, or cause or procure to be made any such machine, &c. or any part, model, or plan thereof, with intent to export, or that the same may be exported to some other port or place than Great Britain or Ireland, he will be liable to the same penalties as under the first section, s. 4. By the 26 G. 3. c. 76. such parts of the 21 G. 3. c. 37. as prohibits the exportation of wool, cards, or stock cards, not exceeding in value four shillings per pair, and spinners cards, not exceeding in value one shilling and sixpence per pair, used in the woollen manufacture, are repealed.—*Process.* Both under the *first* and *fourth* sections of the statute, justices of the peace have the same power as in case of seducing workmen, of issuing a warrant to apprehend the offender, and requiring bail or committing him for trial at the sessions or assizes. They may also, by a similar process, order the packages to be seized and detained in custody. For rules affecting the structure of the indictment, &c. see ante, 514, n. (a.)

person as aforesaid, and having no regard for the laws and statutes of this realm, nor fearing the pains and penalties therein contained, after the said twenty-fourth day of June, one thousand seven hundred and eighty-one, and within the space of twelve months next before the taking of this inquisition, to wit, on the said, &c. with force and arms at, &c. aforesaid, unlawfully had in his custody, power, and possession, certain other tools, utensils, and implements, to wit, &c. [*here describe the tools again,*] proper for the preparing of the cotton manufactures of this kingdom, with intent to export the same last-mentioned tools, utensils, and implements to some other port or place than Great Britain or Ireland, to wit, to Hamburgh, in contempt, &c. against the form, &c. and against the peace, &c. [Fourth count varying from the third as the second does from the first, in using the word *working* instead of *preparing*.] And the jurors, &c. do further present, that the said A. B. being such person as aforesaid, and having no regard, &c. nor fearing, &c. after the said twenty-fourth day of June, one thousand seven hundred and eighty-one, and within the space of twelve months next before the taking of this inquisition, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully did collect certain other tools, utensils, and implements, to wit, &c. [*here set forth the tools again*] proper for the *working* of the cotton manufactures of this kingdom, with intent that the same last-mentioned tools, utensils, and implements might be exported to some other port or place than Great Britain or Ireland, in contempt, &c. against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. being such person as aforesaid, and having no regard, &c. nor fearing, &c. after the said twenty-fourth day of June, one thousand seven hundred and eighty-one, and within the space of twelve months next before the taking of this inquisition, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully did obtain certain other tools, utensils, and implements, to wit, &c. proper for the *preparing* of the cotton manufactures of this kingdom, *with intent to export* the same last-mentioned tools, utensils, and implements to some other port or place than Great Britain or Ireland, to wit, to Hamburgh, in contempt, &c. against the form, &c. and against the peace, &c. [Seventh count same as fifth, only using the word *preparing* instead of *working*, and laying the intent to be, that the tools, &c. *might be exported*, instead of *to export*. Eighth count did *apply for* tools, &c. proper for

Fifth count, for collecting tools with intent to export.

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Sixth count, for obtaining goods with intent to export.

preparing manufactures, &c. with intent to *export*. Ninth count did *apply* for tools, &c. proper for *working*, &c. with intent *that the same might be exported*. Tenth count did *cause and procure to be made* tools, &c. proper for *preparing*, &c. with intent to *export*. Eleventh count varying from tenth as the eighth from the seventh.]

On 21 Geo. 3. c. 37, for putting on board ship machines and models in the cotton manufacture, in order to export same (a).

That A. B. late of, &c. C. D. late of the same place, merchant, E. F. late of, &c. and G. H. late of, &c. not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and eighty-one, that is to say, on, &c. with force and arms, at, &c. aforesaid, unlawfully did lade on board, and cause and procure to be laden on board a certain boat or lighter then and there lying in the river Thames, divers, to wit, twenty machines proper for the *preparing* of the cotton manufactures of this kingdom, and divers, to wit, twenty models of machines proper for the *preparing* of the cotton manufactures of this kingdom, in order that the same machines and models might be laden and put from the said boat or lighter on board a certain ship or vessel called the *Bolina*, which said ship or vessel was not then bound directly to any port or place in Great Britain or Ireland, in contempt, &c. and against the peace, &c. and also against the form, &c. [Second count like the first, only using the word *working* instead of *preparing*, in both places where it occurs. Third count like the first, only instead of machines inserting "twenty parts of a machine," and instead of models of a machine, "twenty models of parts of a machine." Fourth count varying from the third as the second does from the first, by using the word *working* instead of *preparing*.]

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For unlawfully putting on board implements used in manufacturing (b).

[*Commencement as ante*, 2.] That A. B. late of, &c. on, &c. at, &c. unlawfully did load and put on board, and did cause and procure to be laden and put on board of a certain ship or vessel, then being at Liverpool aforesaid, called the *Hercules*, which was not bound directly to any port or place in Great Britain or Ireland, certain implements, proper for the working

(a) This was the indictment against W. Teasdale and others, A. D. 1800, from the crown office. See last precedent and notes.

(b) *Rex v. Orrel*, *Lanc. Lent Assizes*, 1814. See *ante*, 545, note (a). The defendant was convicted on the first four counts.

up of the cotton manufactures of this kingdom, to wit, one hundred comb plates, one hundred docking plates, one thousand reed wires, one thousand dents, one roving or winding jack and flier, two plyers, and two card stretchers, in contempt of our said lord the king and his laws, against the peace of our said lord the king, his crown and dignity, and against the form, &c. Unlawfully did load and put on board a certain ship or vessel then being at Liverpool aforesaid, called the Hercules, which was not bound directly to any port or place in Great Britain or Ireland, divers, to wit, one hundred comb plates, &c. [as before] being parts of certain machines proper for the working up of the cotton manufactures of this kingdom, [conclusion as before.] Third count describing the articles as being parts of a certain machine or engine called a loom, proper for the working of the cotton manufactures of this kingdom. Fourth count. And the jurors, &c. [as before] Fifth count. Unlawfully had in his possession certain implements proper for the working of the cotton manufactures of this kingdom, to wit, [set out the implements] with intent to export the same to some other port or place than Great Britain or Ireland, to wit, New York in America. [Conclusion as in first count.]

INDICTMENT—OFFENCES AGAINST TRADE FOR USURY AND ILLEGAL BROKERAGE.

That H. V. late of, &c. after the twenty-ninth day of September, in the year of our Lord one thousand seven hundred

(a) See other precedents, 3 Ld. Raym. 36. * 4 Ed. West. 216. Trem. P. C. 269. Vet. Ent. 224. Co. Ent. 394, 435. Leg. Flu. 38, 49. Rast. Ent. 689. Cro. C. C. 743, 7th edit. 1 Bro. 229. Vid. 214. Han. 100. Br. R. 454. It is very unusual to proceed by indictment.—As to this offence, see in general, Hawk. b. 2. c. 82, *per totum*. Com. Dig. Usury, C. 4 Bla. Com. 158. It seems that the taking of exorbitant, or, as it was called *Jewish* interest, was

a misdemeanor at common law before the enactment of the prohibitory statutes, Hardr. 420. It is, indeed, laid down by some writers, that the taking any consideration for the loan or forbearance of money was an offence cognizable by the ecclesiastical courts, and liable to severe spiritual censures, Hawk. b. 2. c. 82. s. 4. At the present day, however, unless the usury exceed 40 per cent. the sum named as *Jewish*, it seems that no indictment at

and fourteen, to-wit, on, &c. at, &c. aforesaid, did lend to one B. G. the sum of one hundred pounds of lawful money of G. Britain, and the said B. G. for securing the repayment of the said sum of one hundred pounds, with lawful interest for the same, to the said H. V. or his order, he the said B. G. afterwards, to wit, on, &c. at, &c. aforesaid, did give and deliver to the said H. V. a certain promissory note, bearing date the day and year last aforesaid, by which said note the said B. G.

common law can be supported. The statute 12 Car. 2. c. 13, which fixes the rate of interest at 6, and the 12 Ann. stat. 2. c. 16, which reduces it to 5, though they give a penalty partly to the king, and partly to the informer, both prohibit the act to be done in positive terms, and without any reference to the mode of proceeding. We have already seen, that, where this is the case, any person who disobeys the provision, may be indicted, ante, 279. 2 Burr. 799. 4 T. R. 205. 8 East, 41. And yet it has been holden, that no indictment will lie for usury, but the party who chuses to prosecute, must proceed to recover the penalties in a penal action, 11 Mod. 174. It is certain, that no criminal proceeding can be maintained for a mere agreement to take illegal interest, in pursuance of which nothing is carried into execution, 2 Stra. 816. Com. Dig. Usury, C. But, on the general principle already stated, which seems very clearly laid down, an indictment would lie under the statutes, where the usurious transaction was completed. A very eminent barrister in A. D. 1814, advised, that in a case of a clear and palpable usury, a party may be indicted at common law. Over this offence, if so it may be called, the quarter

sessions have no jurisdiction to exercise, 2Ld. Raym. 1144. Salk. 680. 1 Sess. Cas. 41. 11 Mod. 174. Nor after the time for commencing an action by a common informer has elapsed, will the court of King's Bench grant an information, because the penalty is then vested only in the crown, and the attorney-general alone can institute proceedings to obtain it, 2 Stra. 1234. The *indictment*, if sustainable, must contain all the requisites of a declaration for usury. The *venue* is to be laid in the county where the usurious interest was received, *Pearson v. McGowan*, Hil. T. 5 Geo. 4. By 17 Geo. 3. c. 26, (repealed by 53 Geo. 3. c. 141, except as to annuities and rent-charges granted before 14th July, 1813), the taking more than ten shillings per cent. for procuring any money to be advanced on a life annuity, is made an indictable offence, punishable with fine and imprisonment; as is also the procuring or soliciting any infant to grant a life annuity, or to promise, or otherwise engage to ratify it when he comes of age. In prosecutions under this statute, it is not necessary to prove the exact sum stated in the indictment, though not laid with a *scilicet*, 6 T. R. 265. 1 Esp. Rep. 285.

did promise to pay to the said H. V. or his order, the said sum of one hundred pounds, with lawful interest for the same, six months after the date of the same note. And the jurors, &c. do further present, that the said H. V. afterwards, to wit, on, &c. at, &c. aforesaid, unlawfully, unjustly, and corruptly did receive and take of and from the said B. G. the sum of four pounds and fifteen shillings of lawful money of G. Britain, of the monies of him the said B. G. for the forbearing and giving day of payment of the said sum of one hundred pounds, from the said, &c. until the said, &c., which said sum of four pounds and fifteen shillings so as aforesaid received and taken by the said H. V. for the forbearing and giving day of payment of the said sum of one hundred pounds, from the said, &c. until the said, &c. did exceed the rate of five pounds for the loan of one hundred pounds for the year, to the great damage of the said B. G. against the form of the statute, &c. and against the peace, &c.

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That A. B. late of, &c. after the making of a certain act of parliament, made and passed in the seventeenth year of the reign of our present sovereign George the Third, intituled, &c. [*set out the title of the act*] to wit, on, &c. at, &c. did ask, demand, accept, and receive of and from C. D., E. F., and G. H., the sum of £322. 10s. (b), as a gratuity and reward for soliciting and procuring the loan, and for the brokerage of the sum of £2450, then and there actually and *bonâ fide* advanced and paid by I. K. to them the said C. D., E. F., G. H., as and for the price and consideration of divers annuities or yearly rent-charges, amounting to £350, that is to say, &c. [*setting forth the several annuities*] which said sum of £322. 10s. for the loan and brokerage of the said £2450, exceeded the sum of ten shillings for every £100, so then and there actually and *bonâ fide* advanced and paid by the said I. K. to the said C. D. against the form, &c.

Under 17 Geo. 3. c. 26. s. 7. for receiving more than proper sum for procuring an annuity (a).

(a) This statute is now repealed by 53 Geo. 3. c. 141, except as to annuities and rent-charges granted before 14th July, 1813. The indictment is taken from 6 T. R. 263, on which the defendant was convicted, and there

held sufficient. See note to last precedent. See also 1 Bro. 241.

(b) A *scilicet* is not necessary in order to enable the prosecutor to prove a different sum. See 6 T. R. 263.

CHAPTER XII.

INDICTMENTS, &c. FOR OFFENCES AGAINST HEALTH OF PUBLIC, AS BREACH OF QUARANTINE — EXPOSING PERSONS AFFECTED WITH INFECTIOUS DISORDERS, AND SELLING UNWHOLESOME PROVISIONS, &c.

FOR BREACH OF QUARANTINE.

Information by attorney-general against a party for breach of quarantine (a).

[*COMMENCEMENT of information as ante, 6.*] That on, &c. an order was made by the king in council, whereby it was ordered that if any pilot or other person should go on

(a) See this sketch of the information, 4 T. R. 202. 2 Leach, 549. As to this offence, see 4 Bla. Com. 161. The act now in force relating to the quarantine laws is the 6 Geo. 4. c. 78, which repeals all other acts. The former regulations, and for offences against which the above indictment was prepared, were directed by the 26 Geo. 2. c. 6. 28 Geo. 3. c. 34. 39 & 40 Geo. 3. c. 80. and 45 Geo. 3. c. 10. and see 2 Chit. Com. Law, 62 to 87. By the first of which statutes any vessel arriving at any part of Great Britain, Ireland, and the islands adjoining, from any place where an infectious disease is suspected to have been prevalent, is obliged to make quarantine at such places and in such manner as is directed by Orders in Council, notified by proclamation, or published in the London Gazette; and

that until such quarantine has been performed no person, goods or merchandize, shall be brought on shore in any part of his majesty's dominions, unless by licence directed and permitted by the Orders in Council, s. 1.

It was also provided that if any commander, master, or other person, having charge of any vessel liable to perform quarantine, having notice thereof, shall knowingly quit, or permit any individual on board to leave it, to go either on shore, or to any other vessel, unless by licence, or shall not in convenient time after due notice repair to the places appointed, he shall forfeit £500, half to the king, and half to the informer. If any other part of the ship's company transgress by coming on shore, they shall forfeit £200 to be recovered in the same way, and be imprisoned for six months,

board any ship or vessel obliged to perform quarantine, such pilot or other person should perform quarantine in like manner as any person coming in such ship or vessel should be obliged to perform the same; that the order was published in the gazette in the same month, and has ever since been in force: that the defendant, well knowing the premises, but having no regard to the laws and statutes of this realm, afterwards, on, &c. at, &c. with force and arms went on board a certain ship called the Stephen, which was obliged to perform quarantine, in order conduct the same into the port of Bristol, and did not perform quarantine in like manner as any person coming in the said ship or vessel was obliged to perform the same, but that the defendant, on, &c. at, &c. with force and arms, unlawfully quitted the said ship by going on board a certain other ship or vessel, in a certain place within his majesty's dominions, before the ship (Stephen) had fully performed, and been discharged from such quarantine, he the said defendant not being in any manner or in any case, or by any licence

s. 5. In the construction of this act, it has been holden that the prohibition in the first section being independent of the penalties contained in the fifth, makes the transgression of its regulations an offence at common law, for which the party may be indicted, and may be punished as for a misdemeanor at the discretion of the court, in which the defendant was convicted. 4 T. R. 402. 2 Leach, 551, 2. But a pilot going to the ship and returning before the expiration of the quarantine, is not liable to the penalties of s. 5. though he may be punished for a misdemeanor at common law, *id.* *ibid.* By 45 Geo. 3. c. 10. s. 41. judges of K. B. have a power to commit persons apprehended, and indicted previous to their trial, and by s. 42. all offences of this nature may be tried in any county without regard to the place where the cause of the prosecution arises.

The 26 Geo. 2. c. 6. s. 2. directs that if the plague shall break out in any ship to the north of Cape Finisterre, the master or other person who has the command thereof, must proceed to the harbour of New Grimsby, in the Islands of Scilly, (which, by 29 Geo. 2. c. 8., is altered to St. Helen's Pool) and there make known his situation to some officer of the customs there, who is immediately to send intelligence to one of the secretaries of state; that measures may be taken for the relief of the crew. In the mean time, the commander must keep the ship there, or if he cannot reach that port, remain at sea, without suffering any of the ship's company to leave it, or having any intercourse with other vessels. Any breach of these regulations by the master or other person on board is declared felony, without benefit of clergy.

directed or permitted by any order made by his majesty in council so to do, in contempt, &c. to the evil example, &c. against the peace, &c. and also against the form of the statute, &c.

FOR EXPOSING PERSONS WITH INFECTIOUS DISORDERS.

Indictment for exposing a child infected with the small pox in public street (a).

That on, &c. E. F. an infant of tender age, to wit, about the age of one year, was infected, ill, and sick of, and with a certain contagious, infectious, and dangerous disease and sickness called the small pox, at, &c. And that A. B. the wife of C. D. late of, &c. aforesaid, the mother of the said E. F. well knowing the premises aforesaid, afterwards and whilst the said E. F. was so infected, ill, and sick as aforesaid, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and injuriously did take and carry the said E. F. into and along a certain open public way and passage called, &c. situate in, &c. aforesaid, used for all the liege subjects of our said lord the king on foot, to go, return, and pass in, along, and through, in which said public way and passage, there were divers liege subjects of our said lord the king, and near unto and by divers dwelling-houses, habitations, and residences of divers liege subjects of our said lord the king, then there dwelling, inhabiting, and residing, and unto and into a certain common highway, situate and being in, &c. aforesaid, used for

(a) Obtained from the crown office. The same form with other counts were used in 4 M. & S. 73. It was there objected, that the indictment ought to have alleged, that there was some sore upon the child, and to have shewn, that the act was unlawful; but the court held it was clearly a misdemeanor to expose a person labouring under such an infectious disorder, that if the exposure had been at all warranted, on the ground of necessity, the fact might have been proved by way of defence upon the

trial, but that the allegation, that the act was unlawfully and injuriously done, rebutted such a presumption. The defendant was sentenced to three months imprisonment. The indictment should state that the defendant knew the child to be infected with the small pox, Andr. 162. In general, if the indictment be defective, the court will not quash it upon motion, but leave the defendant to demur, 4 Burr. 2116. See next precedent.

all the liege subjects of our said lord the king on foot, and with horses, coaches, carts, and carriages, to go, return, pass, ride and labour in, along, and through, in and along which said common highway there, divers liege subjects of our said lord the king, were then going, returning, passing, riding, and labouring, and amidst, and among divers liege subjects of our said lord the king, who then and there, to wit, in the same common highway, in the parish and county aforesaid, had met and assembled together, and that the said S. F. afterwards, and whilst the said E. F. the younger, was so infected, ill, and sick as aforesaid, to wit, on, &c. and on divers other days and times, between that day and the 29th April in the same year, with force and arms, at, &c. aforesaid, wrongfully and injuriously did take and carry the said E. F. the younger, into and along the aforesaid open and public way and passage called, &c. and near unto and by the aforesaid dwelling-houses, habitations, and residences of divers liege subjects of our said lord the king, there dwelling, inhabiting, and residing, and also near unto and by divers liege subjects of our said lord the king, in the said open and public way and passage, on, &c. and on the said other days and times there being, to the great and manifest danger of infecting with the said contagious, infectious, and dangerous disease and sickness called the small pox, all the liege subjects of our said lord the king, who, on the several days and times aforesaid, were in and near the aforesaid open and public way and passage, dwelling-houses, habitations, residences, and common highway, and who had not had the said disease and sickness, to the great damage and common nuisance of all the said last-mentioned liege subjects of our said lord the king, to the evil example of all other persons, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. that the said S. V. well knowing that the said E. F. was so infected, ill, and sick as aforesaid, afterwards and whilst the said E. F. was so infected, ill, and sick, to wit, on the said, &c. and on divers other days and times between that day and the said, &c. in the same year, with force and arms, at, &c. aforesaid, unlawfully and injuriously did take and carry the said E. F. into and along the aforesaid open public way and passage called, &c. situate and being, &c. and near unto and by the aforesaid dwelling-houses, habitations, and residences of divers liege subjects of our said lord the king, there dwelling, inhabiting, and residing, and also near unto and by divers liege subjects of our said lord the

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Second count,

king, in the said open and public way and passage, on, &c. and on the said other days and times as last mentioned, there being, to the great and manifest danger of infecting with the said contagious, infectious, and dangerous disease and sickness called the small pox, divers and very many of the liege subjects of our said lord the king, who on the said, &c. and on the said divers other days and times last mentioned, were in the said open and public way and passage, and who dwelled, inhabited and resided there, and near thereto, and who had not had the said disease and sickness, to the great damage and common nuisance, &c. to the evil, &c. and against the peace, &c. And the jurors, &c. that the said A. B. well knowing that the said E. F. was so infected, ill, and sick as aforesaid, afterwards and whilst the said E. F. was so infected, ill, and sick, to wit, on, &c. aforesaid, with force and arms, at, &c. unlawfully, and injuriously did take and carry the said E. F. unto and into the aforesaid common highway, situate and being, &c. in and along which said common highway there, divers liege subjects of our said lord the king were then going, returning, passing, riding, and labouring, and amidst and among divers liege subjects of our said lord the king, who then and there, to wit, in the said common highway, had met and assembled together, to the great and manifest, &c. [*as in first count.*]

Third count.

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Against a surgeon who inoculated children at his own house with the small pox, for causing them to be brought there through the public streets while infected with the contagious disorder (a).

Middlesex. That C. D. late of, &c. surgeon, on, &c. and on divers other days between that and the 10th day of June, in the same year, with force and arms, at, &c. aforesaid, unlawfully and injuriously did inoculate and infect E. F., an infant of tender years, to wit, about the age of one year, G. H. an infant of tender years, to wit, about the age of three years, I. J. an infant of tender years, to wit, about the age of fifteen months, and divers other infants of tender years, whose names to the jurors aforesaid are unknown, with a certain contagious infection, and dangerous sickness and disease called the small pox, by means whereof the said E. F., G. H., and I. J., and the said divers other infants, on the said, &c. and on the said other days and times, at, &c. aforesaid, became and were ill and sick of and with the said contagious infection, and dan-

(a) The defendant was convicted, and the court held him guilty of an offence at common law, *Rex v. Taunton*, Hilary

Term, 55 Geo. 3.; and so in the case of *Rex v. Burnett*, 4 M. & S. 272.

gerous sickness and disease, and that the said C. D. well knowing the premises aforesaid, after he had so inoculated and infected the said E. F., G. H., I. J., and the said divers other infants, and whilst the said E. F., G. H., and I. J., and the said divers other infants were ill and sick of and with the aforesaid contagious, infectious, and dangerous sickness and disease as aforesaid, to wit, on the said, &c. and on the said other days and times, with force and arms, at, &c. aforesaid, unlawfully and injuriously did cause and procure the said E. F., G. H., I. J., and the said divers other infants to be taken, carried and conveyed into-and along a certain public street and common highway, called, &c. situate and being in, &c. aforesaid, and into and along divers other public streets and common highways there also situate and being used for all the liege subjects of our said lord the king on foot, and with horses, coaches, carts, and carriages, to go, return, pass, ride, and labour in, along, and through, in and along which said several streets and common highways there, divers liege subjects of our said lord the king were then, to wit, on the said, &c. and on the said other days and times, going and returning, passing, riding, and labouring, and near unto and by divers dwelling-houses, habitations, and residences of divers liege subjects of our said lord the king then and there dwelling, inhabiting, and residing, to wit, on the said, &c. and on the said other days and times, at, &c. aforesaid, to the great danger of infecting with the said contagious, infectious, and dangerous sickness and disease, called the small pox, all liege subjects of our said lord the king, who on the said several days and times aforesaid were in and near the aforesaid public street and common highways, dwelling-houses, habitations, and residences, and who had not had the said disease and sickness, to the great damage and common nuisance of all the liege subjects of our lord the king, to the evil example, &c. and against the peace, &c.

[There were four other counts exactly similar, except that each stated one child to have been inoculated and exposed without mention of the others.]

SELLING UNWHOLESOME PROVISIONS.

Against a contractor for supplying the marines in Chatham barracks with bread, for providing it of a bad and unwholesome quality (a).

That A. B. late of, &c. on, &c. and for a long space of time, to wit, for the space of six months then last past, at the parish aforesaid, in the county aforesaid, was duly employed and entrusted to make and deliver for the use of the effective non-commissioned officers, drummers, and private soldiers, of and belonging to the marine forces of our said lord the king, then serving on shore in barracks at Chatham aforesaid, certain

(a) This was the indictment against Baldock, A. D. 1801, obtained from the crown office. See other precedents, 3 M. & S. 11. 4 Campb. 12. 2 East P. C. 821. Stark. 657. *Offence.* It is a misdemeanor at common law, knowingly to give any person injurious food to eat, whether the offender be excited by malice or a desire of gain; nor is it necessary that he should be a public contractor, or the injury done to the public service, to render him criminally liable, 2 East P. C. 822. 4 Bla. Com. 162. 6 East, 133 to 141. If a baker direct his servant to make bread containing a specific quantity of allum, which, when mixed with the other ingredients, is innocuous, but, in the execution of these orders, the agent mixes up the drug in so unskilful a way that the bread becomes unwholesome, the master will be liable to be indicted, 3 M. & S. 10. 4 Camp. 10. But an indictment will not lie against a miller for receiving good barley to grind at his mill, and delivering a mixture of oat and barley, and which is musty and unwholesome, 4 M. & S. 214; nor will an indictment lie against a person who contracted with a guardian of the poor for delivering bread of *short weight*, and therefore the precedent in

the first edition of this work for such an offence, was held bad. *Indictment.* It is not necessary to state in the indictment for delivery of unwholesome bread, that the defendant acted under contract, or in violation of any duty imposed on him by his peculiar condition, 2 East P. C. 822, nor is it necessary to set forth what the materials were which rendered the composition noxious, 3 Maul. & Selw. 16. It seems also that there is no occasion to state that the defendant intended to injure the health of the parties for whose consumption the pernicious articles were designed, *id. ib.* An indictment against a miller, charging in the same counts that he received two separate parcels of barley, each of four bushels, to be ground at his mill, and that he delivered three bushels forty-six pounds of oatmeal and barley mixed, other and different than the produce of the said four bushels, is ill, for the uncertainty to which of the four bushels it relates; the indictment is also bad, if it do not shew a certain place where the defendant received the barley to grind, 4 M. & S. 214. An indictment for lodging poor in an unhealthy place, need not name the poor, Cald. 432.

loaves of bread, to be made of good marketable English or foreign wheat, at and for a certain price or sum of money to be therefore paid to the said A. B. for the same, and that the said A. B. being so employed and entrusted as aforesaid, but being an evil-disposed person, on the said, &c. with force and arms, at, &c. aforesaid, did unlawfully, falsely, fraudulently, and deceitfully, and for his own wicked lucre in the course of his said employ, and in breach and violation of his trust and duty in that behalf, deliver unto one C. D., the said C. D. then and there being a serjeant in the said marine forces of our said lord the king, divers, to wit, twenty loaves of bread, as and for loaves of bread made wholly of good marketable English or foreign wheat, for the use and supply of himself the said C. D. and divers others of the said marines, whereas in truth and in fact * the said loaves of bread were not made wholly of good marketable English or foreign wheat, but on the contrary thereof contained divers noxious and unwholesome materials, not fit or proper for the food of man; and whereas in truth and in fact, he the said A. B. then and there well knew that the said loaves of bread were not made wholly of good marketable English or Foreign wheat, but that the same on the contrary thereof did contain such noxious and unwholesome materials as aforesaid, to the great damage of the said C. D., and the said other marines for whose use and supply the said loaves of bread were so delivered as aforesaid, to the evil example, &c. and against the peace, &c.

And the jurors, &c. do further present, that the said A. B. being so employed and entrusted as aforesaid, but being such evil-disposed person as aforesaid, afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, did unlawfully, falsely, fraudulently, and deceitfully, and for his own wicked lucre in the course of his said employ, and in further breach and violation of his duty and trust in that behalf, deliver unto one E. F., [*same as the first count to the end. The four next counts like the second, each stating the delivery of bread to a different person.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. being so employed and entrusted as aforesaid, but being such evil-disposed person as aforesaid, afterwards, to wit, on the said first day of April, in the forty-first year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully, falsely, fraudulently, and deceitfully, in the course

Second count.

Seventh count, for delivery of such improper bread to a great number of non-commissioned officers, &c.

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Eighth count.

of his said employ, and in further breach and violation of his trust and duty in that behalf, deliver unto divers, to wit, one thousand other of the said non-commissioned officers, drummers, and private soldiers, of and belonging to the said marine forces of our said lord the king, for their use and supply, a great number of other loaves of bread, that is to say, one loaf of bread to each and every of the said last-mentioned non-commissioned officers, drummers, and private soldiers, as and for loaves of bread made wholly of good marketable English or foreign wheat, whereas, &c. [*as in the first count from the asterisk to the end.*] And the jurors, &c. do further present, that the said A. B. being so entrusted and employed as aforesaid, but being such evil-disposed person as aforesaid, afterwards, to wit, on the said fourth day of April, in the forty-first year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully, falsely, fraudulently, and deceitfully, and for his own wicked lucre in the course of his said employ, and in further breach and violation of his trust and duty in that behalf, deliver unto divers, to wit, one thousand other of the said non-commissioned officers, drummers, and private soldiers, of and belonging to the said marine forces of our said lord the king for their use and supply, a great number of other loaves of bread, that is to say, one loaf of bread to each and every of the said last-mentioned non-commissioned officers, drummers, and private soldiers, as and for loaves of bread made wholly of good marketable English or foreign wheat; whereas in truth and in fact, &c. [*as in the first count from the asterisk to the end.*]

For supplying a hospital with unwholesome bread (a).

That A. B. late of, &c. on, &c. at, &c. knowingly, wilfully, deceitfully, and maliciously did provide, furnish, and deliver, to and for 800 French prisoners of war, whose names to the said jurors are yet unknown, and there being under the protection of the king, confined in a certain hospital called Eastwood hospital, in the parish and county aforesaid, divers large quantities, to wit, 500 pounds weight of bread, to be eaten as food by the said French prisoners of war, such bread being then and there made and baked in an unwholesome and insufficient manner, and then and there being made of and containing dirt, filth, and other pernicious and unwholesome

(a) This indictment is framed according to the notes to the last precedent.

ingredients not fit to be eaten by man, he the said A. B. then and there well knowing the said bread to be baked in an unwholesome and insufficient manner, and to be made of and contain dirt, filth, and other pernicious and unwholesome materials and ingredients, not fit to be eaten as aforesaid, whereby the said prisoners of war did then and there eat of the said bread, and thereby then and there became distempered in their bodies and injured and endangered in their healths, to the great damage of the said prisoners of war, to the great discredit of our said lord the king, to the evil example, &c. and against the peace, &c.

That A. B. late of, &c. for the space of six months now last past, at Chelsea, &c. hath been employed and intrusted to make and deliver for the use of the Royal Military Asylum there, the same being an institution of our lord the king, for the bringing up certain children of non-commissioned officers, drummers, and privates of his majesty's army, belonging to which asylum there were divers, to wit, 1200 of the said children, certain loaves of good household bread for the use and supply of the said children, at and for a certain price to be therefore paid to the said A. B. for the same, and that the said A. B. being so employed and entrusted, but being an evil-disposed person, and not regarding the laws, &c. with force and arms, &c. did unlawfully, falsely, fraudulently, and deceitfully, and for his own lucre, in the course of the said employ, and in breach of his trust and duty, deliver and cause to be delivered unto J. H. and J. G. being respectively officers or servants belonging to the said asylum, divers, to wit, 297 loaves of bread, as and for loaves of good household bread, for the use and supply of the said asylum, and the children belonging to the same; whereas in truth and in fact, the said loaves of bread were not good household bread, but on the contrary, contained divers noxious and unwholesome materials, not fit or proper for the food of man, and the said A. B. well knew that the said loaves of bread were not good household bread, but that the same did contain such noxious materials, to wit, at, &c. aforesaid. [*Conclusion as in the last precedent.*]

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For selling bread
mixed with al-
lum (a).

[* * *In consequence of the indictment in the former edition against a baker who contracted with the guardians of the poor of Norwich, for delivering bread short of weight, being held bad, (the nature of the offence therein charged not being indictable), it has been omitted in this edition, and this will account for no matter appearing between the pages 559 to 565.*]
